

CTCNet
Exhibit 3-D

Denver, CO

CTCNet Reply to Opposition

Exhibit 3-D

Nextel Sprint Lease Summary Detail: Case Studies

<u>SPRINT MAJOR MARKET AREAS</u>	<u>Channels</u>	<u>Call Sign</u>	<u>Licensee Name</u>	<u>Sprint Licensed?</u>	<u>Sprint Leased?</u>	<u>Lease Expiration</u>	<u>Exclusive Negs.?</u>	<u>ROFR?</u>	<u>ROFR Length</u>
Denver, CO BTA RANK: 20 BTA Number: 110									
Denver, CO	MDS1	WPY32	Sprint Communications Company, L.P.	Yes	No				
Denver, CO	MDS2	WMY475	Sprint Communications Company, L.P.	Yes	No				
Denver, CO	A1,A2,A3,A4,B1,B2,B3,B4	WHA72	Regents of the University of Colorado	No	Yes	11/10/2011	No	Yes	Uncertain
Denver, CO	C1,C2,C3	WHR521	Front Range Educational Media Corp.	No	Yes	11/1/2012	No	No	N/A
Denver, CO	C2,C3	WND567	Front Range Educational Media Corp.	No	Yes	11/1/2012	No	No	N/A
Denver, CO	C4	WLX526	N. American Cath.Ed'l Prog.Found Inc.	No	Yes	4/25/2017	No	Yes	Uncertain
Denver, CO	D1,D2,D3,D4	WHR488	Denver Area Educational Telecommunications Consortium	No	No (Not in a lease)				
Denver, CO	D1,D2,D3,D4	WHR781	School Dist. of Denver and State of CO.	No	Yes	Lease term has not yet commenced	No	No	N/A
Denver, CO	E1,E2,E3,E4	WLK321	Sprint Communications Company, L.P.	Yes	No				
Denver, CO	F1,F2,F3,F4	KNSE324	Digital and Wireless Television, L.L.C. (Partial assignment to Sprint filed)	Yes	No				
Denver, CO	G1,G2,G3,G4	WHR780	School Dist. of Denver and State of CO.	No	Yes	Lease term has not yet commenced	No	No	N/A
Denver, CO	H1	WNTH953	Sprint Communications Company, L.P.	Yes	No				
Denver, CO	H2	WNTH998	Sprint Communications Company, L.P.	Yes	No				
Denver, CO	H3	WNEY681	Sprint Communications Company, L.P.	Yes	No				

Denver, CO
MDS 1

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WPY32

*Licensed to Sprint Subsidiary
– American Telecasting of
Denver, Inc.*

Denver, CO
MDS 2

-

WMY475

*Licensed to Sprint Subsidiary
– American Telecasting of
Denver, Inc*

Denver, CO
A & B Groups
-
WHA72

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AIRTIME LEASE AGREEMENT

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

This Airtime Lease Agreement (hereinafter referred to as the "Agreement"), made and entered into as of this 1st day of January, 1994, by and between the Regents of the University of Colorado ("University" or "Lessor") , a body corporate, on behalf of Academic Media Services and American Telecasting of Denver, Inc., ("Lessee").

WHEREAS, Lessor is an accredited institution engaged in the formal education of enrolled students in Boulder, Colorado;

WHEREAS, Lessor holds the authorization (the "License") issued by the Federal Communications Commission ("FCC") to construct and operate an Instructional Television Fixed Service ("ITFS") facility in the Boulder, Colorado greater metropolitan area (the "Area") on eight (8) channels, specifically channels A1 A2, A3 and A4 (Station WHA-72) and channels B1, B2, B3 and B4 (Station WHA-72 (collectively, the "Channels") in order to distribute educational programs to the public;

WHEREAS, Lessor contemplates that some excess airtime will be available on said Channels;

WHEREAS, the FCC has authorized ITFS licensees to so lease excess channel capacity to non-ITFS users;

WHEREAS, Lessee is in the business of providing channels for the distribution in the Area of television programming via microwave transmissions in what is

known as "wireless cable" and is desirous of leasing such excess ITFS capacity from Lessor;

WHEREAS, Lessor and Lessee believe that the combination of educational programming and entertainment programming will be mutually advantageous and will provide a significant benefit to the general public in the Area;

WHEREAS, by Agreement dated January 19, 1988 (the "1988 Agreement"), Lessor agreed to so lease excess airtime over the Channels to TV Communications Network, Inc. ("TVCN");

WHEREAS, Lessee has succeeded to the rights of TVCN under the 1988 Agreement; and

WHEREAS, Lessor and Lessee desire to replace the 1988 Agreement with a new agreement to continue the relationship set forth in the 1988 Agreement pursuant to the modified terms set forth herein.

NOW, THEREFORE, in consideration of the premises and of their mutual promises, undertakings, covenants, and conditions set forth herein, Lessor and Lessee do hereby agree as follows:

1. Term of Agreement. (a) Initial Term. Subject to the provisions for earlier termination contained in Paragraph 12 hereof, the term of this Agreement shall commence upon the date hereof and shall continue in full force and effect through the date on which the current term of the License is due to expire (i.e., November 10, 1996) (said period of effect is herein after referred to as the "Initial Term").

(b) Renewal Term. Subject to the FCC's renewal of the License, this Agreement shall automatically and without further notice be extended for one (1) successive additional term (such additional term is hereinafter referred to as the "Renewal Term"), of a duration equal to ten (10) years less the length of the Initial Term, unless and until Lessee shall have served written notice on Lessor at least sixty (60) days prior to the expiration date of the Initial Term, that it elects not to renew this Agreement for a Renewal Term. It is acknowledged and agreed that Lessee shall have the absolute right not to renew this Agreement, notwithstanding any provision hereof to the contrary.

(c) Other Matters. In consideration of the capital and their expenditures and commitments undertaken by Lessee in the performance of this Agreement, it is the desire of Lessor to afford to Lessee the maximum number of five (5) year renewal terms of this Agreement permissible by law. The foregoing provisions regarding the term of this Agreement have been agreed upon by Lessor and Lessee in recognition of current FCC policies regarding the maximum permissible duration of leases of ITFS excess channel capacity. If at any time during the term of this Agreement the FCC shall modify those policies so that leases of excess capacity extending beyond a term of ten (10) years are permitted, then this Agreement will automatically be deemed amended to provide for the maximum number of additional automatic five (5) year renewal terms (not to exceed an additional five (5) terms). Subject to the then-applicable Rules of the FCC, this Agreement shall automatically and without further notice be extended for such successive additional terms (each such additional term is herein after referred to as the "Further Renewal Term") of five (5) years each unless and until Lessee shall have served written notice on Lessor at least sixty (60) days prior to the expiration date of the Initial Term or

then current Further Renewal Term (herein after referred to as the "Expiration Date"), that it elects not to renew this Agreement for a Renewal Term. It is acknowledged and agreed that Lessee shall have the absolute right not to renew this Agreement, notwithstanding any provision hereof to the contrary.

(d) Additional Terms. Commencing six (6) months before the expiration of the Renewal Term or Further Renewal Term, if so renewed, Lessor and Lessee shall begin to negotiate the terms of an additional ten (10) year renewal of this Agreement upon terms that are mutually satisfactory. During such negotiating period, Lessor shall not negotiate or enter into a lease agreement for airtime on the Channels with any individual or entity other than Lessee for the period to be covered by the renewal term contemplated by this Subsection.

(e) Right of First Refusal to Lease. Lessor hereby grants to Lessee, for a period of one (1) year commencing on the last day of the Initial Term hereof, if this Agreement is not so renewed, or on the last day of the last Renewal Term or Further Renewal Term, if it is so renewed, a right of first refusal to enter into a new agreement for the leasing of the airtime on Lessor's Channels pursuant to the following terms. If Lessor receives a bona fide written offer from a third party to lease any of the airtime on Lessor's Channels within said one (1) year period, Lessor shall transmit the same in writing to Lessee as Lessor's offer and Lessee shall then have the right for thirty (30) days after its receipt of said offer to accept said offer. If, after said thirty (30) day period, Lessee shall fail to accept such offer, its option hereunder as to such offer shall terminate and, then and only then, may Lessor so agree to lease such airtime to a party other than Lessee. There upon, Lessor shall have the right for a period ending on the thirtieth (30th) day after the expiration of the initial thirty (30) day period to lease the airtime on its Channels to, and only to, the aforesaid bona fide prospective lessee at the identical price, terms and conditions as were offered to Lessee. Lessor may

not accept said offer with any modification to its price, terms and/or conditions in any respect without first again providing Lessee with written notice of and the right to accept the modified offer pursuant to the foregoing procedures. Upon expiration of said second thirty (30) day period, if Lessor shall not have entered into a binding agreement for the lease of all of the airtime on its Channels on the aforesaid terms, all of the restrictions and options imposed in this Paragraph 1(e) shall again obtain and continue in full force and effect during said one (1) year period.

(f) Renewal of License. It is understood by both parties that any Renewal Terms or other additional terms are conditioned upon Lessor receiving any necessary renewal of Lessor's ITFS License from the FCC. In the event that Lessor's License is not so renewed, this Agreement will terminate and the parties will have no further liability to the other except for the repayment by Lessor to Lessee of the Advance Airtime Fee pursuant to Paragraph 9(b) hereto and Lessor's purchase from Lessee of the Leased Equipment pursuant to Paragraph 21(b) hereto. However, in the event that, as a result of such non-renewal, Lessor still possesses the FCC authorization to operate one (1) or more of the Channels, Lessee may elect not to terminate and to continue this Agreement pursuant to Paragraph 12(a).

(g) Applications. Lessor shall file all necessary and appropriate applications and related documents with the FCC and, as required by law, with any and all other local, state, and federal governmental agencies to preserve, maintain and renew its ITFS License and any associated authorizations. Lessee shall be responsible for any and all costs incurred by Lessor associated with Lessor's foregoing activities, subject to Lessee's prior written approval of the amount of such costs and Lessee's provision to Lessor of satisfactory documentation

of such expenses.

2. Excess Capacity. Lessor has determined that there will be excess capacity available on the eight (8) ITFS Channels to be utilized for Lessor's educational needs and that this excess capacity is available for entertainment or other commercial programming. Lessor has further determined that, by combining its educational programming with Lessee's entertainment programming, a significant increase may be achieved in the number of persons who will have access to Lessor's educational programming at little or no additional cost.

3. Lease of Excess Capacity. Lessor agrees to lease to Lessee the "excess" capacity available on all eight (8) of its ITFS Channels for the term of this Agreement. Through combanding, channel mapping, channel loading and/or other technical means available and permitted by the FCC's Rules, Lessor agrees to so make available, for the exclusive use of Lessee, the equivalent of at least four (4) full time channels for Lessee's transmissions. The remaining time available over and above the time utilized for Lessor's educational programming shall be considered "excess capacity," as that term is defined by the Rules of the FCC, specifically Section 74.931 thereto, and shall be available to Lessee for entertainment programming (herein after referred to as "Lessee Time"). Unless otherwise prohibited by the Rules of the FCC, Lessee Time shall include all capacity made available on the second and all succeeding video channels made available through the use of bandwidth compression or other similar technologies which allow the division of an ITFS channel into two or more discrete video channels, each of which shall hereinafter be referred to as "Sub-ITFS Channels". Lessor reserves for itself a minimum of twenty (20) hours per week per ITFS channel to be used for ITFS programming. (Such time is referred to herein as "Lessor Reserved Time.") In

addition, Lessor preserves for itself for any expanded ITFS programming, an additional twenty (20) hours per week per channel. (Such time is referred to herein as "Lessor's Preserved Time.") All remaining time shall be referred to as "Lessee Time." Not less than thirty (30) days prior to the initiation of program service, Lessor shall provide Lessee in writing with a schedule containing the specific Lessor's Reserved Time and Lessor's Preserved Time airtime hours which it intends to utilize. Thereafter, in the event Lessor subsequently wishes to modify the schedule to recapture additional hours from Lessee Time for the provision of qualified ITFS programming, Lessor shall provide Lessee with six (6) month's advance notice of any revision to its schedule of the specific air time hours Lessor intends to utilize. In the event that Lessor intends to utilize more than forty (40) hours per week per ITFS channel, Lessee shall have the option of terminating this Agreement pursuant to Paragraph 4 hereof. Notwithstanding the foregoing, Lessor shall retain control of the subcarriers and vertical blanking intervals (herein after referred to as "VBI's") of its channels except that portion of spectrum that is utilized to scramble the signal, for channel mapping and the operation of Lessee's addressing system. It is the mutual intention of Lessor and Lessee that Lessor will make available to Lessee the maximum amount of airtime over the Channels permissible under the FCC's Rules and policies and utilize channel mapping technology to the greatest extent possible under those Rules and policies. In the event that those Rules and/or policies are modified to increase the amount of airtime that may be so made available to Lessee, Lessor will make such additional airtime available to Lessee, for which airtime Lessee will pay to Lessor the appropriate Airtime Fees calculated pursuant to Paragraph 9 hereto.

4. Lessor Use of Excess Capacity. Lessor shall suffer no economic or

operational detriment arising from its use of up to forty (40) hours per week per Channel of airtime for ITFS programming. In the event Lessor subsequently decides to utilize more than forty (40) hours per week per Channel for qualified ITFS programming, Lessor shall provide Lessee with six (6) month's advance written notice of the specific airtime hours it wishes to so use. For each hour of airtime over and above forty (40) hours per week per Channel that Lessor wishes to use, Lessor shall be obligated to pay Lessee at the air market-airtime lease rate for such airtime.

5. Determination of Compensation Due. Lessee and Lessor shall negotiate the amount of the valuation of Lessee's business as a going concern due Lessee under Paragraph 4 in good faith.

6. Technical Changes in Channel Operation

(a) Channel Expansion. If Lessor applies with the FCC for License modification for a technical expansion of its ITFS Channels (i.e., a combanding or similar technical condition), this Agreement shall be applicable to such channels as so modified for all terms and conditions herein. To the extent that Lessor has available additional airtime that Lessor does not use for educational purposes as a result of such modification Lessor will make such airtime available to Lessee at no additional cost to Lessee. Such added channels and their associated excess airtime shall carry ITFS programming in the same ratio as noted above, unless the FCC allows otherwise for additional Lessee airtime, in which case Lessor shall make available to Lessee the maximum amount of airtime permissible.

(b) Compression Technology. The parties acknowledge that, as a result of

technological advances, it may soon be economical for Lessee to utilize compression technology in connection with its business to increase the amount and nature of video programming and other services it can provide to its subscribers. In the event that the parties mutually agree to utilize a compression technology for purposes of this Agreement, the University shall, within its authority, utilize its best efforts to secure such FCC authority as is required at the time to employ such compression technology for the Channels and that reception equipment shall be augmented by Lessee to include the necessary decompression equipment

(e) Frequency Reuse Technology. The parties acknowledge that, as a result of technological advances, it may soon be economical for Lessee to utilize spread spectrum or other new technologies to reuse the full Capacity of a Channel for a variety of business purposes at the same time as Lessor is transmitting its video signal. In the event that the parties mutually agree to utilize such technology for purposes of this Agreement, the University shall, within its authority, utilize its best efforts to secure such FCC authority as is required at the time to employ such technology. Furthermore, it is the intention of the parties that Lessee shall enjoy the maximum additional capacity gained thereby, subject to FCC rules and policies provided, however, that Lessee shall bear all costs associated with Lessor's fulfilling its obligations pursuant to this Paragraph.

(d) Other Matters. Lessor recognizes the mutual benefits and technological advantages of the use of encoding methods for program security, equipment signaling and individual addressability control over unauthorized equipment use. Lessor agrees that its program services and/or airtime use will not cause harm or interfere with Lessee's current or future signal or other such

technical needs utilized for the operation and services provided by the system. Furthermore, Lessor will not, by its own action or through a third party, utilize any part of its licensed frequency spectrum to create or operate a service that is in competition with Lessor's service for the term of this contract unless Lessee provides its written approval prior to any such action. Such approval shall not be unreasonably withheld.

7. Integration of Lessor's Programming. Only at Lessor's direction, Lessee agrees to endeavor to integrate Lessor's programming into the overall communications service offered to Subscribers, without cost charged to Lessor other than the costs specified herein. This integration shall include, but shall not be limited to, at the sole discretion of Lessee, listing Lessor's material in program guides produced for Subscribers, inclusion in selected advertising and promotional materials, and full attribution to Lessor as the source of such material of Lessor.

8. Transmission Facilities.

(a) Leased Equipment. Lessee's License specifies a Transmission Point for provision of services contemplated by this Agreement on Eldorado Mountain outside of Boulder, Colorado. Lessee, or its designee, shall design, engineer, purchase, and install such transmitters, transmission line, antennas, and receivers as are required to operate the Channels. Any equipment so used in said construction shall be leased to Lessor pursuant to Paragraph 10 hereof. (Said equipment is hereinafter referred to as the "Leased Equipment.") Lessee shall supervise and shall be responsible for the installation of the Leased Equipment and shall retain title to the Leased Equipment. Lessee will order the equipment no later than ninety (90) days

after it has received a signed Agreement from Lessor. Lessee shall maintain adequate casualty and liability insurance to cover all Leased Equipment installed pursuant to this Agreement.

(b) Power Increase. If Lessee so requests prior to June 30, 1994, Lessor will file modification applications with the FCC seeking authority to increase the output power of the Channels to the higher level of fifty (50) watts, provided that such higher level is in accordance with FCC Rules and will not be reasonably anticipated to cause harmful electrical interference to any other radio transmission facility for which an application has previously been accepted by the FCC or authorization granted by the FCC, and which is entitled to protection from such interference under FCC Rules. In the event that said authorization(s) for power increase is obtained, Lessee, at its sole expense, shall provide and install appropriate transmitters and related headend equipment in order to effect said power increase and such transmitters and equipment shall thereupon become part of the Leased Equipment. Lessee shall advance Lessor amounts equal to all reasonable costs, including legal and engineering fees, to be incurred by Lessor and associated with said application(s) and power increase(s), provided that Lessee has provided its written approval of the amount of such expenses in writing and Lessor has provided Lessee with satisfactory documentation of such expenses.

9. Service Charges.

(a) Airtime Fee. Commencing on the Start Date and continuing through December 31, 1994, Lessee shall pay to Lessor, as consideration for the equivalent of four (4) full time Channels provided to Lessee hereunder and the performance by Lessor of its additional obligations hereunder, a monthly fee (the "Airtime Fee") of Two Thousand Dollars (\$2,000.00). Commencing on January 1, 1995 and

through June 30, 1995, the Airtime Fee for such Channels will be the greater of: (i) a minimum monthly fee of Two Thousand Dollars (\$2,000.00); or (ii) a fee based upon the number of Subscribers calculated as thirty-six cents (\$0.36) per Subscriber. Commencing on July 1, 1995 through the remainder of the Initial Term and any Renewal Term, Further Renewal Term or additional term hereunder, the Airtime Fee for such Channels will be the greater of: (i) Eight Thousand Dollars (\$8,000.00); or (ii) a fee based upon the number of Subscribers calculated as forty cents (\$0.40) per Subscriber.

(b) Advance Airtime Fee. Upon execution of this Agreement by both parties, Lessee will pay to Lessor the amount of Sixty Three Thousand Dollars (\$63,000.00) (the "Advance Airtime Fee"). Such amount will represent advance payment for a portion of the Airtime Fee due to Lessor for Channel use during the Renewal Term extended under Paragraph 1(b) but not reflected in the amounts stated in Paragraph 9(a). In the event that Lessor does not obtain the renewal of its License by the FCC and/or this Agreement is not so extended for such Renewal Term, refund the Advance Airtime Fee to Lessee upon such non-renewal or termination of this Agreement.

(c) Computation of Number of Subscribers. For purposes of this Agreement, the term "Subscribers" shall be deemed to mean the number of paid and current (i.e. having paid all subscriber service fees due Lessee within sixty (60) days of the subscriber's receipt of the invoice for such fees from Lessee) subscribers receiving the programming of Lessee or others pursuant to Paragraph 2 hereof by means of the Channels as of the last day of the month in question, except that, in the month in which service is terminated upon expiration of the Initial Term or a Renewal Term or pursuant the termination provisions contained herein, the number of such subscribers shall be determined as of the date of termination. In those situations where

programming is sold in bulk for viewing at isolated locations in the same facility (that is, where a number of viewing units are grouped for billing purposes such as may be the case with hotels, apartments and condominiums) and Lessee's rates therefore are less than its prevailing monthly rate for the sale of Lessee's programming to individual subscribers in the Market Area, the number of Subscribers from such bulk billing facility shall be determined by dividing the total monthly revenues derived from said bulk billing point by the then - prevailing monthly rate to Area individual subscribers.

(d) Required Certificate. Invoice and Payment Procedures.

Lessee shall, within thirty (30) days of the end of each month after January 1, 1995, provide Lessor with a Certificate showing the number of Subscribers for the preceding month. The Airtime Fee payable by Lessee to Lessor, as determined in accordance with Paragraph 9(a) hereof, shall be computed on the Certificate, and Lessee shall forward said Airtime Fee to Lessor at the time of tendering the Certificate. Lessee shall include on the Certificate any other information reasonably requested by Lessor, so that Lessor may accurately determine that the Airtime Fee tendered by Lessee has been calculated correctly pursuant to Paragraph 9(a) hereof. Any other charges to be paid by Lessee hereunder shall be invoiced to Lessee on a monthly basis by Lessor. Said invoices shall satisfactorily demonstrate to Lessee that the charges are reimbursable hereunder and contain an itemization of the charges contained therein, and shall be paid by Lessee within fifteen (15) days after the date of its receipt thereof, provided that Lessee has given its prior written approval of the amount of such charges prior to their having been incurred by Lessor.

(e) Right to Audit. Lessee and Lessor shall, while this Agreement is in force, keep, maintain and preserve complete and accurate records and accounts, including all invoices, correspondence, ledgers, financial and other records pertaining to Lessee's and Lessor's charges hereunder, and such records and accounts shall be available for inspection and audit at the respective offices of Lessee and Lessor at any time or times during the time service is being provided to Lessee hereunder or within ninety (90) days thereafter, during reasonable business hours, by Lessee or Lessor or their respective nominees. Notwithstanding the foregoing, Lessee and Lessor shall be entitled to only one audit of each other's records and accounts during any six-month interval, unless there is discovered an underpayment or overpayment of greater than ten percent (10%) of any of the charges provided for herein, in which case the party which has suffered from the underpayment or overpayment, as the case may be, shall be entitled to request one (1) additional audit of the other's records and accounts. Lessee and Lessor shall provide each other with five (5) business days' advance written notice of their intent to inspect said records and accounts prior to being allowed to do so. Lessee and Lessor shall not interfere with each other in the exercise of their respective rights of inspection and audit set forth herein.

The exercise in whole or in part at any time or times of the right to audit records or accounts or of any rights herein granted or the acceptance by Lessee or Lessor of any statement or remittance tendered by or on behalf of either Lessee or Lessor shall be without prejudice to any rights or remedies of either of them and shall not preclude Lessee or Lessor thereafter from disputing the accuracy of any such statement or payment.

(f) Subscriber Contracts. Lessor shall not interfere with the right of Lessee

or its designee to lawfully modify, waive, rescind, terminate, in whole or in part, or cancel any and all services or contracts with Subscribers. In case any such services or contracts are rescinded, terminated or canceled, Lessor shall not be entitled to any participation in revenues or claims whatsoever with respect to the unperformed portion of any such contract, provided, however, that Lessor shall be entitled to payment of fees hereunder for ITFS service rendered by Lessee to a Subscriber for all or a portion of any month for which payment has been made by the Subscriber to Lessee.

(g) Proration of Fees. In the event that: (i) the Start Date shall be a date other than the first day of a calendar month; or (ii) this Service Agreement shall be terminated or expire on a date other than the last day of a calendar month and it is determined that such termination or expiration shall have occurred in a manner not affecting Lessor's right to payments hereunder, the Airtime Fee due Lessor in such month shall be prorated.

10. ITFS Channel Equipment Lease. Lessor shall lease from Lessee all or part of Leased Equipment. The terms of the lease agreement, to be entered into within sixty (60) days hereof, shall include the following:

(a) Rent. Lessor shall pay no fee to the for any use of the Leased Equipment, it being understood that Lessor's provision of the airtime at the rates provided in this Agreement is full consideration for Lessee's lease of the equipment to Lessor. It is also understood that the Lessor shall not incur any charges for space, telephone, or any other rental fees occurred upon Eldorado Mountain by the lessee.

(b) Taxes. Lessee shall be required to pay all taxes and other charges assessed against the Leased Equipment, without cost to or reimbursement by Lessor, and Lessee shall be entitled to claim depreciation and investment tax

credits thereunder for income tax purposes.

(c) Maintenance and Operating Costs. Lessee shall be required to bear all costs associated with maintaining and operating the Leased Equipment.

(d) Term. The term of the Lease shall commence upon the Start Date and shall end upon the termination of this Agreement.

11. Control Over Programming. Lessee intends that only programming of a sort which will not serve to place Lessor's reputation in the community in jeopardy will be transmitted by Lessee on the leased channels. The parties recognize the difficulties inherent in specifying exact standards in this Paragraph, but believe that good faith efforts on both sides can overcome whatever difference which may arise. Lessor shall have the absolute right to deny Lessee the right to transmit on said leased channels any program which is obscene as defined by the laws of the United States or which would violate the Rules of the FCC.

12. Termination.

(a) Termination for Lack of Authorization. This Agreement may be terminated by Lessee upon thirty (30) days' written notice to Lessor in the event that Lessor does not possess the FCC authorization to operate all of the Channels, including, but not limited to, Lessor's FCC License being terminated or revoked by the FCC, or otherwise within six (6) months of execution of the Agreement. (If this Agreement is terminated due to the failure of the FCC to renew the License, Paragraph 1(f) will apply to such termination). Should such termination occur, each party shall be entitled to retain all equipment and materials purchased or furnished by such party. There shall be a final accounting of moneys due under this Agreement, and when completed, there shall

be no further liability of one party to the other. However, in the event that Lessor retains the authorization to operate some, but not all of the Channels, through termination, non-renewal or otherwise, upon mutual agreement the parties Lessee may elect to continue this Agreement with regard to those remaining Channels. In such event: (i) the Airtime Fees due Lessor from Lessee shall be reduced to that amount otherwise due Lessor pursuant to Paragraph 9 times a fraction, the numerator of which is the number of Channels for which Lessor holds the authorization to operate and the denominator of which is eight (8) (the "Fraction"); (ii) Lessor shall refund to Lessee that portion of the Advance Airtime Fee in the amount of (\$63,000.00) less (\$63,000.00 times the Fraction); and (iii) Lessor shall be required to make available to Lessee for its exclusive use on a full-time basis a minimum of the equivalent number of Channels equal to four (4) times the Fraction.

(b) Termination by Reason of Default and nonperformance. At the option of the non-defaulting party, this Agreement may be terminated upon the material breach or default by the other party of its duties and obligations hereunder if such breach or default shall continue for a period of thirty (30) consecutive days after such party's receipt of notice thereof from the non-defaulting party. Failure to make any payment required under Paragraph 9 hereof shall, if such failure continues for a period of thirty (30) days after written notice thereof to Lessee, constitute breach of this Agreement by Lessee and, in such event, Lessor may elect to cancel and terminate this Agreement. In the event of termination pursuant to this Subparagraph, such termination shall not affect or diminish the rights or claims or remedies available in equity or at law to the non defaulting party arising by reason of such breach or default.

(c) Termination by Failure of Lessee's Business Plans.

During a period of one hundred twenty (120) days after execution of this Agreement by Lessor and Lessee, Lessee shall have the option to terminate this Agreement by notifying Lessor, in writing, that circumstances exist with reference to the transactions contemplated by this Agreement which would interfere with Lessee's business plan.

(d) Early Termination by Lessee

Lessee may terminate this Agreement at any time for any reason by providing Lessor with six (6) months' prior written notice. In the event of such termination, neither party shall have any further obligation to the other, except that Lessee shall reimburse Lessor for any out-of-pocket expenses previously approved by Lessee and payable pursuant to this Agreement.

13. Notice. Any notice to be given by Lessor to Lessee under any provision of this Agreement shall be by hand delivery or by prepaid overnight express courier to President, American Telecasting of Denver, Inc., 4065 North Sinton Road, Suite 201, Colorado Springs, Colorado 80907 and to William D. Freedman, Gurman, Blask & Freedman, Chartered, 1400 Sixteenth Street, N.W., Suite 500, Washington, D.C. 20036. Any notice to be given by Lessee to Lessor under any provision of this Agreement shall be by hand delivery or by prepaid overnight express courier to University of Colorado, Academic Media Services, Campus Box 379, Room 364, Folsom Stadium, Boulder, Colorado or at such other location designated by Lessor.

14. Severability. Should any court or agency, including the FCC, determine that any provision of this Agreement is invalid, the remainder of the Agreement shall stay in effect and the parties agree to use their best efforts

to negotiate a replacement provision which is valid.

15. Venue and interpretation. This Agreement shall be governed by, and construed and enforced in accordance with the Communications Act of 1934, as amended, the rules and policies of the FCC and the laws of the State of Colorado.

16. Entire Agreement. This Agreement constitutes the entire Agreement between the parties and supersedes all prior oral or written provisions of any kind, including the 1988 Agreement. The parties further agree that this Agreement may only be modified by written agreement signed by both parties.

17. Assignment. Lessor may not assign, transfer, sell, dispose of or otherwise alienate or encumber its rights or obligations under this Agreement or the License or other authorizations relating to the Channels without the prior written consent of Lessee, which consent shall not be unreasonably withheld and provided further that the assignee/transferee of the License expressly assumes in writing all of the obligations of Lessor hereunder. Lessee may assign its rights or obligations hereunder and may subcontract any portion of its obligations without restriction, but shall provide Lessor with written notice thereof at least fifteen (15) days prior to the effective date of such assignment and/or subcontracting.

18. Right of First Refusal. If, at any time after the date of the execution of this Agreement, Lessor shall determine to sell, convey, assign or otherwise dispose of the License and/or authorizations for the Channels (the "Authorizations") Lessee, or its designee then eligible to be licensed to operate such Channels, shall have the first right and option to acquire such

Authorizations, subject to the following procedures:

(i) Within ten (10) days after receiving an offer to acquire the Authorizations, Lessor will serve Lessee with written notice containing the terms of that offer, identifying the offer and stating Lessor's intent to accept the offer in the event that Lessee does not elect to match the offer on substantially the same terms as those contained in the notice and original offer.

(ii) Within thirty (30) days of its receipt of such notice, Lessee will notify Lessor in writing of its intention to match the offer to obtain the Authorizations on substantially the same terms contained in the original offer, in which event Lessor will reject the original offer's offer and accept that of Lessee. Lessee's failure to so timely notify Lessor of its intention to substantially match the original offer shall be construed as notification that Lessee does not wish to so exercise its right of first refusal with regard to the original offer and, only in such event may Lessor accept the original offer.

(iii) In the event that any term of the original offer is changed in any respect or a new offer is presented, before accepting such offer, Lessor must first follow the procedures specified in the foregoing subparagraphs (i) and (ii), providing Lessee notice with regard to the revised offer and giving it the opportunity to exercise its right of first refusal thereto.

(iv) At the commencement of any negotiations with any party for the acquisition by that party of the Authorizations, Lessor will provide such party, in writing, with full disclosure of Lessee's rights provided for in this Paragraph 18 and of Lessor's intention to honor those rights.

19. Cooperation. Lessor and Lessee each warrant to each other that it will take no action that will unreasonably interfere, threaten or frustrate the

other's purposes or business activities; Lessor and Lessee agree to keep the other informed and to coordinate with the other any of its activities that may have such an effect on the other.

20. Purchase of Leased Equipment

(a) Lessor Not in Breach. Upon termination of this Agreement, provided that Lessor is not in breach of its obligations hereunder and the FCC has renewed the License, Lessor shall have the right of option to purchase the Leased Equipment used exclusively for Lessor's ITFS operation, exercisable within thirty (30) days of such termination. That equipment shall consist of: those transmitters, down-converters, power supplies, STL equipment, cable, connectors, fittings and hardware, and any other equipment used through this lease for the sole and exclusive use for Lessor's signal transmission, transport, delivery and reception. Any equipment which is used in a shared fashion (such as transmit antenna, decoders, combiners) in providing signals other than Lessor's signals are excluded from this option to purchase. The intent of this purchase option is to provide Lessor with the capability to continue to perform on Lessor's ITFS license. The purchase price shall be the then book value (depreciated cost of assets) of said equipment as noted above.

(b) Other. The parties acknowledge that Lessee has agreed to undertake the capital and other expenditures and commitments in the performance of this Agreement, including its purchase of the Leased Equipment, with the expectation shared by Lessor that it will be able to lease the Channels from Lessor as contemplated herein for a period of at least ten (10) years and that Lessee will comply with the terms of this Agreement. Accordingly, in the event that this Agreement is terminated and Lessor is in breach of its obligations hereunder, or Lessor fails to obtain from the FCC the renewal of its License,

Lessor will not be obligated to purchase from Lessee the Leased Equipment.

21. Obligation to Transmit. Nothing in this Agreement shall be construed to obligate or create a duty on the part of Lessee to actually transmit any minimum number of hours of programming during the Lessee's Time.

22. Operation of Leased Equipment. Lessee shall supply, at its sole cost and expense, sufficient personnel to operate and maintain the Leased Equipment. Such personnel shall, at all times, be under the supervision of Lessee. Said personnel shall insure that the Leased Equipment shall, at all times, meet the technical operating requirements of the Rules of the FCC. Such operations and maintenance activities shall be undertaken at such times as are consistent with the operating requirements of Lessee's business. Lessor shall have overall responsibility for access to transmission facilities during normal business hours and at other times upon twenty-four (24) hours' prior notice.

23. Start Date. For purposes of this Agreement the Start Date shall be the date of this Agreement January 1, 1994.

24. Agreement to Defend. Lessee agrees to defend any suit or proceeding brought against Lessor based on a claim that any device made by Lessor designed and furnished hereunder constitutes an infringement of any existing United States patent, provided Lessee is notified promptly in writing and is given complete authority and information required for the defense of same; and Lessee shall pay all damages and costs awarded therein against Lessor, but shall not be responsible for any cost, expense incurred or settlement made by Lessor without Lessee's prior written consent. In the event any device furnished hereunder is, in Lessee's or Lessor's opinion likely to or does

become the subject of a claim for patent infringement, Lessee shall at its own expense procure for Lessor the right to continue using said device or modify it to become non-infringing but in the event use of such device is prevented by injunction and Lessee fails to modify or otherwise procure for Lessor the right to continue using it, Lessee will remove such device and shall substitute thereof other non-infringing, FCC approved equipment.

25. Specific Performance. The parties acknowledge and agree that the rights reserved to Lessor and to Lessee hereunder are necessarily of a special, unique, unusual, and extraordinary character, which gives them a peculiar value, the loss of which cannot be adequately or reasonably compensated for in damages or in an action at law, and the breach by either party of any of the provisions of this Agreement will cause the other parts irreparable injury and damage. In such event, the non-defaulting party shall be entitled, as a matter of right, without further notice, to require of the other party specific performance of all of the acts services and undertakings required hereunder, including the obtaining and undertaking of all requisite authorizations to execute or perform this Agreement and to obtain injunctive and other equitable relief in any competent court to prevent the violation or threatened violation of and of the provisions of this Agreement. Neither this provision nor any exercise by Lessor or Lessee of their rights to equitable relief or specific performance herein granted shall constitute a waiver by either party of any other rights which it may have to damages or otherwise.

26. Time of Essence. Whenever this Agreement shall set forth any time for the performance of an act, such time shall be deemed of the essence.

27. Waiver. The express or implied waiver by either party of any breach of any

representation or warranty or any failure to fulfill any condition, covenant or other obligation or liability under this Agreement shall not constitute a waiver of any other representation or warranty or of any other failure in the future or in the past by the other party to fulfill such representation, warranty, condition, covenant, obligation or liability hereunder. It is specifically understood and agreed that nothing contained in this Agreement shall be construed as an express or implied waiver by the University of its governmental immunity or of the governmental immunity of the State of Colorado, as an express or implied acceptance by the University of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of the liabilities allowable under the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq. as a pledge of the full faith and credit of the State of Colorado, or as the assumption by the University of a debt, contract or liability of American Telecasting of Denver, Inc., in violation of Article XI, Section 1 of the Constitution of Colorado.

IN WITNESS WHEREOF, the Regents of the University of Colorado, a body corporate, and American Telecasting of Denver, Inc. have caused this Agreement to be executed by their duly authorized representatives.

The Regents of the University of
Colorado, a body corporate

By

Carol B. Lynch

Printed Name

Carol B. Lynch

Title Acting Vice Chancellor for
Academic Affairs

Date July 10, 1995

American Telecasting of Denver,
~~Incorporated~~

By:

Printed Name

Title

Date

Approved as to Legal Sufficiency
Office of University Counsel

By

Date

[Signature]
June 1995

Denver, CO

C1, C2, C3

-

WHR521



June 3, 2002

Mary M. Shultz
Chief, Licensing and Technical Analysis Branch
Public Safety and Private Wireless Division
Federal Communications Commission
1270 Fairfield Rd.
Gettysburg, PA 17325-5322

Re: ITFS License, Station WHR521

Dear Ms. Shultz:

This letter is in response to your May 16 letter in which you returned our application dated March 20, 2002 for additional information. Regarding your request, our registration number is (FRN): 0001613173. We are resubmitting our application for the CP that expired on March 21, 2002.

WHR521 is licensed to Front Range Educational Media Corporation. The CP was sought as part of the licensee's plans for the two-way uses of the WHR521 channels (C1, C2, and C3) in the Denver PSA. Those plans are subject to successful completion of negotiations with other parties, particularly with regard to excess capacity. Those negotiations and all the related interference consent agreements in the region are taking longer than expected to complete, leading to a delay in the licensee's ability to commence construction.

Accordingly we are seeking a six-month extension in the CP.

Thank you for your attention to this request, and please contact me if you need any further information.

Sincerely,

Willard D. Rowland, Jr.
President and General Manager

Enc:

bcc: BYRON ST. CHAIR
EDDIE HERNANDEZ
BETTY REEVES, SPRINT
JACKIE BOLTON, SPRINT

Metro Denver CHANNEL 12 • Boulder CHANNEL 11 • Colorado Springs/Pueblo CHANNEL 32

2900 Welton Street • Denver, Colorado 80205

303.296.1212 • Fax 303.296.6650 • www.kbdi.org

World View • Community Voice

**Re: Front Range Educational
Media Corporation
ITFS Station WHR-521
Denver, Colorado
FCC Form 330**

EXHIBIT 2
DOCUMENTS, INSTRUMENTS, CONTRACTS OR UNDERSTANDINGS
RELATED TO OWNERSHIP, USE OR CONTROL OF THE STATION FACILITIES
(Response to Item 6)

Attached is a copy of the March 25, 1988 Airtime Lease Agreement between Front Range Educational Media Corporation ("FREMC") and TV Communications Network, Inc. and the December 23, 1993 Certification of Validity and Consent to Assignment between FREMC and American Telecasting of Denver, Inc. Although FREMC believes that a copy of the Agreement was filed with the Commission upon execution, out of an abundance of caution, it is being submitted at this time. Consistent with Commission practice, monetary terms have been redacted.

AIRTIME LEASE AGREEMENT

AGREEMENT, made this 25th day of March 1988, between Front Range Educational Media Corporation, having its principal place of business at 6801 W. 117th Street, Broomfield, Colorado, 80020 (hereinafter referred to as "Front Range") and TV Communications Network Inc. (hereinafter referred to as TVCN) having its principal place of business at 2550 South Parker Road, Building 3, Suite 300, Aurora, Colorado, 80014.

WHEREAS, Front Range is a non-profit educational organization formed, among other purposes, to provide advanced instructional services to accredited educational institutions and governmental organizations; and

WHEREAS, Front Range desires to provide educational programming on a for-credit and a not-for-credit basis to interested persons in and around Denver, Colorado over its Instructional Television Fixed Services ("ITFS") telecommunications facilities; and

WHEREAS, the parties specify this agreement encompasses "ITFS" channels C-1, C-2, and C-3 as defined by the rules of the Federal Communications Commission ("FCC"), for which Front Range FCC Construction Permits; and

WHEREAS, Front Range desires to build a transmission system utilizing said channels and thus have its educational programs and those of others reach a broad segment of the public.

Whereas Front Range contemplates that excess air time will be available on said system; and

WHEREAS, TVCN is desirous of leasing excess air time on said system for the purpose of establishing a television distribution system similar to a cable television system but using over-the-air transmission (Wireless Cable Service); and

WHEREAS, TVCN is desirous of colocating the transmission site of the proposed ITFS facilities with other transmission facilities of TVCN; and

NOW, THEREFORE, in consideration of the premises and of the mutual promises, undertakings, covenants and conditions set forth herein, the parties hereto do hereby agree as follows:

1. Term of Agreement.

1.1 Initial Term. Subject to the provisions for earlier termination contained in Paragraph 13 hereof, the term of this Agreement shall commence upon the date hereof and shall continue in full force and effect for a period of five (5) years from the Start Date as defined in Paragraph 7.

(Said period hereinafter referred to as the "Initial Term".) Notwithstanding any other provision of this paragraph, both parties agree to perform those actions which this Agreement obligates them to carry out before the Start Date.

1.2 Renewal Term. This Agreement shall automatically and without further notice be extended for one (1) additional term (such additional term is hereinafter referred to as the "Renewal Term") of five (5) years unless TVCN shall have served written notice on Front Range at least six months prior to the expiration date of the Initial Term (hereinafter referred to as "Expiration Date"), that it elects not to renew this Agreement for the Renewal Term.

1.3 Operation During Extended Term. If TVCN fails to renew this Agreement for the Renewal Term TVCN shall have the option to continue to lease the ITPS Channels for a period of eighteen (18) months after the Expiration Date of this Agreement on the same terms and conditions as are provided for in this Agreement, in order to afford each party an opportunity to prudently avail itself of alternative distribution facilities. If TVCN elects to operate for eighteen (18) months following the Expiration Date pursuant to this subparagraph, it shall so notify Front Range in writing no later than six months prior to the Expiration Date. TVCN may, during the first year of the extended term, elect to continue with the full renewal term in accordance with paragraph 1.2 by giving written notice to Front Range. Unless such notice is timely given TVCN shall cease to lease the ITPS channels on the last day of this eighteen (18) month period (The "Extended Expiration Date").

1.4 If TVCN fails to both renew this Agreement for the renewal term and operate during the extended term then upon TVCN's cessation of usage of the ITPS Channels, Front Range shall have the option of either leasing the transmission facilities for an additional eighteen (18) months, at the fair market cost of leasing said transmission facilities, or in the alternative, purchasing the transmission facilities during that time at their fair market value. During this 18-month period, TVCN shall use its best efforts to ensure that the transmission site shall be available to Front Range at a cost not to exceed the direct out of pocket cost paid by TVCN.

1.5 Total Term of Agreement. The end of this agreement shall coincide with the end of the last operating period of the several defined in paragraphs 1.1, 1.2, 1.3 and 1.4. However, certain provisions as specifically noted shall remain in effect after the end of this agreement.

2. Facilities.

2.1 Costs. TVCN shall bear all costs, subject to an Equipment Lease Agreement, associated with the engineering

and construction of the Transmission Facilities. It is acknowledged and agreed that TVCN shall have the absolute right not to expend the funds necessary to construct the Transmission Facility if PCC authorization to move the transmission location to a site desired by TVCN cannot be obtained or if any other PCC action or lack of action makes it impossible to construct the system in the desired manner at the location designated by TVCN.

2.2 Transmission Facilities. TVCN requires the transmission site to be colocated with other facilities TVCN intends to construct. TVCN will select such site and will take responsibility for all engineering work necessary to modify the existing FCC Construction Permits to specify the new site. Front Range shall consult with TVCN in the preparation of the site relocation applications to ensure that all technical parameters of the proposed system are consistent with the intended use of the ITPS channels by both parties and with FCC rules. Upon execution of this agreement, TVCN shall forthwith proceed with the selection of the new site and the related engineering work necessary to file location change applications with the FCC. As soon as permitted under FCC procedures TVCN shall commence to construct the ITPS transmission facilities in accordance with Front Range's revised FCC authorizations. TVCN shall purchase and install such transmitters, microwave links, transmission line and antennas as are required to operate and maintain the ITPS Channels in accordance with the provisions of such authorization. Any equipment so used in said construction shall be leased to Front Range pursuant to Paragraph 3 hereof. Front Range shall supervise the installation of the Leased Equipment to the extent necessary to fulfill its obligations under the FCC rules. TVCN shall retain title to the leased equipment. At the termination of this Agreement complete possession of the leased equipment and the right to remove it from the transmission site shall pass to TVCN unless Front Range purchases the leased equipment in accordance with paragraph 1.4. Unless front Range purchases the equipment and continues to use it where installed at the time of purchase any costs to restore leased premises to their original condition shall be born by TVCN. The requirement to restore the leased premises shall survive the termination of this agreement.

2.3 Any equipment desired by TVCN at Front Range receiving sites to prevent reception and for distribution of TVCN's signals shall be provided by TVCN at no cost to Front Range. Front Range agrees to allow the installation of such devices by TVCN.

3. ITPS Equipment Lease Agreement.

Front Range shall lease from TVCN all equipment purchased and installed by TVCN pursuant to Paragraph 2.1 of

this Agreement. A list of major equipment is attached hereto as Exhibit A.

3.1 Rent. Front Range shall pay to TVCN [REDACTED] per month for the use of the leased equipment attached as Exhibit A hereto.

3.2 Taxes. TVCN shall be required to pay all taxes and other charges assessed against the leased equipment, and shall be entitled to any available depreciation and investment tax credits thereunder for income tax purposes.

3.3 Maintenance and Operating Costs. TVCN shall be required to bear all costs associated with maintaining, operating and insuring the leased equipment, including site rental charges and electricity.

3.4 Risk of Loss. Front Range shall have no responsibility for the loss or damage of the leased equipment; provided however, that Front Range shall be liable for the loss or damage caused by any willful misconduct or gross neglect of Front Range, its agents, affiliates, representatives or invitees which is directly responsible for such loss or damage. In the event Front Range is liable for loss or damage of any such equipment, it shall pay TVCN for the time and materials required to restore the equipment to its previous condition or to replace the equipment at then current prices.

4. Lease of Air Time on ITFS Channels.

4.1 TVCN Time. TVCN will have available for its permitted uses as defined herein all "excess capacity" as defined in paragraph 74.931 (c) of the FCC rules in effect on the date of this contract. Said paragraph 74.931 of the FCC rules is attached hereto as exhibit B and fully incorporated herein. Under this FCC paragraph Front Range must preserve at least 40 hours per week including 6 hours per weekday (Monday through Friday) between the hours of 8:00 A.M. and 10:00 P.M. All other times on all 3 channels is defined as "excess capacity". One half of this preserved time, 3 hours per weekday and a total of 20 hours per week will not be available for TVCN's use. The other half of this preserved time may not always be required by Front Range and when it is not so required will be available for the use of TVCN without additional compensation. Front Range hereby agrees to schedule its preserved time, as nearly as possible, given the FCC "Preserved Time" requirements, to allow TVCN to always have two channels available, although it cannot always be the same two. Sundays, Saturdays and holidays for the full 24 hours will be "excess capacity" time and all 3 channels will be available to TVCN. If during the term of this lease changes in the FCC rules regarding "preserved time" allow or require a change in the available "excess capacity" the monthly payment will be adjusted in accordance with this

lease. The time any channel is available to TVCN in accordance with this paragraph is referred to as "TVCN Time".

4.2 Licensee Control. Nothing herein shall be read to derogate from such licensee control of operations that Front Range, as licensee, shall be required to maintain, and TVCN acknowledges the reservation of all such control, including the right of access to the main transmitter site as required for technical or PCC related purposes.

Consistent with its control, Front Range shall have the absolute right to prohibit TVCN from transmitting any program which is obscene as defined by the laws of the United States, or would be in contravention of the reasonable community standards set forth in the geographic area where the programming is transmitted, or would violate any law of the jurisdictions in which the programming may be received, or the rules and regulations of the PCC, provided however, that Front Range shall be required to notify TVCN in writing of its refusal to permit the transmission of any program.

A receiving point shall be established at TVCN's expense at Front Range premises or other location designated by it capable of receiving and descrambling all material transmitted by TVCN.

4.2.1 Use of the Vertical Blanking Interval and Subcarriers. At all times TVCN shall have full use of the entire communications capacity of the channel or channels including the vertical blanking interval and subcarriers, and may transmit control signals or data with or without video, as long as there is no interference with Front Range's transmission of its television signals.

4.3 Obligation to Transmit. Nothing in this Agreement shall be construed to obligate or create a duty on the part of TVCN to actually transmit any minimum number of hours of programming during the TVCN Time.

4.4 Front Range. Front Range shall retain all air time which is not "TVCN Time". In this regard, Front Range agrees to comply in all respects with the programming requirements of FCC Rule Section 74.931. If non-ITPS use is made of any channel, Front Range will provide the requisite minimum ITPS programming on that channel. This minimum ITPS programming shall include sufficient programming per channel in order to satisfy the PCC's essential use requirement. It is understood that TVCN shall have access to all three (3) ITPS Channels twenty-four (24) hours a day on Saturdays, Sundays and holidays.

4.5 Scheduling of Front Range Time. Not less than thirty (30) days prior to the commencement of ITPS service, Front Range shall notify TVCN in writing of the specific air time hours for the following three (3) months which it

intends to utilize. Such notice shall contain such information as TVCN shall reasonably requires for its operations. In the event Front Range intends to modify its scheduled ITPS programming, it shall provide TVCN ten (10) days written notice of such modification.

4.6 Right to Sublease. During the term of this Agreement or any renewal thereof, TVCN shall not sublease the TVCN Time of any portion thereof without the prior written consent of Front Range, which consent shall not be unreasonably withheld. The sale of commercial announcements or air time for an individual program or series of programs will not be considered a sublease that requires consent.

5. Operations of ITPS Channels.

5.1 Permitted Use. TVCN shall be permitted to use the AT&T time for "Wireless Cable" purposes. Wireless cable is defined as a service using the 2.5 GC ITPS/MMDS/OPS 7 frequencies to deliver consumer oriented television programs and other telecommunications services for a fee to subscribers and to provide auxillary communications services of the types which are now or may in the future be provided by wired cable TV systems.

5.2 Transmission Equipment. Front Range shall at all times remain in ultimate control of the ITPS facility and be responsible for its operation. TVCN at its own expense shall repair and maintain the transmission equipment. However, through supervision, Front Range shall ensure that the Leased Equipment shall at all times meet the technical operating requirements of the rules and regulations of the FCC. Such operations and maintenance activities shall be undertaken at such times as are consistent with the operating requirements of TVCN's business and Front Range's instructional use of the facilities. Any and all supervision activities undertaken by Front Range pursuant to this Paragraph 5.1 shall be at its own expense. Should any technical problem which prevents Front Range's normal use of the equipment remain uncorrected for more than seventy two (72) hours Front Range may in its discretion remedy such problem at TVCN's expense. Access to the transmitter site for Front Range's technical representative is hereby granted by TVCN.

5.3 Improvements. TVCN, at its own expense, may make improvements, alterations or install attachments to the leased equipment (including but not limited to encoding and/or addressing equipment) as may be reasonably required by the exigencies of its business from time to time, provided that: such improvements, alterations and attachments do not violate any FCC rules or regulations; that FCC authorization, if required, has been obtained; and provided further that it does not interfere with the Front Range's scheduled time.

5.4 Reception Equipment. TVCN will install reception equipment at locations to be determined in its sole discretion to provide its programming in the Denver area. All said reception equipment provided pursuant to this Paragraph 5.3 shall remain the property of TVCN upon the termination of this Agreement.

5.5 Studio Transmitter Links. Within six (6) months of Front Range's receiving its broadcast license from the FCC for the ITFS channels TVCN shall provide studio-to-transmitter links to Front Range at TVCN's expense so that Front Range may feed programming during Front Range Time and Extended Time. TVCN may install and utilize such studio transmitter links as are required by its operational needs under its own FCC licenses. Such equipment shall not be part of the leased equipment nor shall it be subject to any control by Front Range as may be required by FCC regulations. Studio transmitter links licensed by the FCC to Front Range but installed to meet the needs of TVCN will be subject to all of the provisions of this agreement.

6. Payments.

6.1 Program Acquisition and Operating Expense Payments. Commencing on the Start Date established by Paragraph 7 of this Agreement and continuing until the termination of this Agreement, TVCN shall provide to Front Range in consideration of the air time lease hereunder and the faithful performance by Front Range of its additional obligations hereunder, the following:

6.1.1 Upon signing this contract TVCN will make a one time payment of [REDACTED] to Front Range. Upon approval of a new location by the FCC as designated by TVCN, TVCN shall make a one time payment of [REDACTED] to Front Range.

6.1.2 Lease Payments in an amount equal to the greater of [REDACTED] of TVCN's gross revenue from the operation of the Denver system of which these channels are a part or [REDACTED] per month during the first year, [REDACTED] per month during the second year and [REDACTED] per month thereafter. Payments will be made within 15 days of the end of each month. The payments under this paragraph will be due from the Start Date as defined below with the first functional month prorated and all succeeding payments based upon calendar months. If TVCN subleases some or all of its air time then the gross revenue for this calculation shall be the gross revenue of TVCN or the gross revenue of TVCN plus the gross revenue of the sub-lease but excluding the payments by the sub-leaser to TVCN, whichever is greater.

6.1.3 Interest on Unpaid Sums. TVCN hereby acknowledges that late payment by TVCN to Front Range of sums due hereunder will cause Front Range to incur costs not

contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly if any sum due from TVCN shall not be received by Front Range within fifteen (15) days after said amount is due, such sum will accrue interest at the rate of [REDACTED] per annum from the date originally due until received by Front Range. During the course of the first 5 years of this lease TVCN will be allowed two exceptions, during which interest on late payment will not accrue until 45 days after said amount is due.

6.2 Audit. Front Range shall have the right at its own expense, upon reasonable notice, to cause a certified public accountant of its choice to inspect the subscriber books of TVCN no more than twice each year to audit the accuracy of payments made under paragraph 6.1.2. Such audits shall be at Front Range expense unless the audit determines the actual payment over any six (6) month period in the aggregate are 11% or more below the proper amount, in which case TVCN shall bear the cost of the audit. TVCN shall maintain complete and accurate records, accounts, invoices, and ledgers for twenty four (24) months after their creation.

6.3 Subscriber Contracts. Front Range shall not interfere with the right of TVCN or its designee to lawfully modify, waive, rescind, terminate, in whole or in part, or cancel any and all services or contracts with TVCN's subscribers.

7. Start Date.

TVCN shall designate and notify Front Range of the start date when it wishes to commence using the "TVCN Time". Such start date shall not be more than thirty (30) days after the completion of construction of the ITFS facility and the filing of the license application, provided that all of the conditions precedent specified in Paragraph 8 hereof shall have been fulfilled or waived. "TVCN Time" shall not begin if ITFS facility is constructed at a temporary site unsuitable to the needs of TVCN.

8. Conditions Precedent.

All of the rights and obligations hereunder shall be subject to the following conditions precedent, which conditions may be waived in writing by the nondefaulting party.

8.1 Authority. That Front Range has PCC authority to construct and operate the ITFS C-1, C-2 and C-3 Channel transmission facilities.

8.2 Material Documents. Front Range will have made available to TVCN for inspection all of the material documents and contracts to which Front Range is a party which

in any way affects the ITPS Channels, including its licenses and other documents from the FCC authorizing its use of the ITPS Channels in the greater Denver area, and said documentation shall be in compliance with requisite authority.

8.3 Leased Equipment. The Equipment Lease described in Paragraph 3 hereof shall have been executed by Front Range and by TVCN.

9. Prosecution of the Petition, Authorization and License.

9.1 Best Efforts to Secure Approval of This Agreement. Both parties hereto shall use their best efforts to diligently prepare, file and prosecute before the FCC all petitions, waivers, construction applications and other related documents necessary to secure FCC approval, if required, of all aspects of this Agreement. TVCN shall assist in the preparation and prosecution of such applications and shall pay all filing fees and direct expenses by TVCN in connection therewith. Notwithstanding anything in this Agreement to the contrary, it is understood that no filing shall be made with the FCC with respect to seeking approval of this Agreement unless both parties hereto have reviewed said document and consent to its submission.

9.2 Further Efforts. Throughout the Term of this Agreement, Front Range shall use its best efforts to obtain and maintain in force all licenses, permits and authorizations required or desired in connection with TVCN's use of the ITPS Channels, and improvements, alterations or modifications of the ITPS equipment. Where requested to do so by TVCN, and where such action would be consistent with the agreement, Front Range shall apply for those reasonable license modifications which would help TVCN in its business. Front Range may and at TVCN's request also file such protests or other petitions to deny against known applications from other parties for license(s) which could electrically interfere with this ITPS system. Front Range shall, when requested, cooperate with TVCN to prevent any unauthorized individual or entity from receiving the signals transmitted during the TVCN Time. TVCN shall bear all costs associated with any such requested efforts. Front Range shall promptly notify TVCN of any event which may affect any of the ITPS Channel licenses, permits or authorizations.

10. Transfer of Control.

10.1 Right of First Refusal. If at any time after the date of the execution of this Agreement, Front Range shall determine to sell, convey, assign or otherwise dispose of the licenses and authorizations for the ITPS channels, TVCN shall have a right of first refusal. The same right shall be granted Front Range should TVCN determine to sell, convey, assign or otherwise dispose of their interests in the ITPS

channels. Both parties acknowledge that the FCC imposes strict education purpose requirements which an organization must meet to be eligible to hold an FCC ITFS license.

If, at any time after the date of the execution of this Agreement, Front Range shall determine to sell, convey, assign or otherwise dispose of the licenses and authorizations for the ITFS Channels, this agreement shall survive any such transfer of license(s) or authorizations. Front Range shall ensure that the transferee organization shall be contractually obligated to recognize this Agreement and keep it in effect, subject to any applicable FCC regulations.

11. Representations and Warranties.

The parties hereto represent and warrant to each other the following:

11.1 Organization. Front Range is an organization duly organized and existing in good standing under the laws of the State of Colorado and has full power and authority to own its property and licenses and to carry out all of the transactions contemplated by this Agreement. TVCN is a corporation duly organized and existing in good standing under the laws of the State of Colorado and has full power and authority to own its property and to carry out all of the transactions contemplated by this Agreement.

11.2 Compliance With Law. To the best of their knowledge, Front Range and TVCN have complied with and are now complying with all laws, rules and regulations governing the business, ownership and operation of the ITFS Channels. Except as otherwise stated herein, no consent, approval or authorization by or with any governmental authorities on the part of Front Range and TVCN is required in connection with the transactions contemplated herein. All attendant contracts, undertakings, as well as the carrying out of this Agreement, will not result in any violation or be in conflict with any judgment, decree, order, statute, rule or regulation of any governmental authority applicable to Front Range.

11.3 Corporate Authority. All requisite corporate resolutions and other authorizations necessary for the execution, delivery, performance and satisfaction of this Agreement by TVCN and Front Range have been duly adopted and complied with.

11.4 Misrepresentation of Material Fact. No document or contract which has been shown by one party hereto to the other and which in any way affects any of the properties, assets or proposed business of them as relates to this Agreement, and no certificate or statement furnished by either of them or on behalf of them in connection with the transactions contemplated hereby contains any untrue

statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein not misleading.

11.5 Good Standing. There is no complaint, condition, event, defect or occurrence existing or, to the knowledge of Front Range, threatened against Front Range which would materially threaten its ability to secure or renew the ITPS license.

13. Termination.

13.1 Loss of FCC authorization. In the event Front Range is not authorized to operate the subject ITPS channels in the manner contemplated by this Agreement or at some future time is permanently prohibited by the FCC from so operating then the end of the term of this Agreement will be the last day of permitted or actual operation which ever is later. Operation will be considered to be permanently prohibited if the problem which causes the prohibition cannot reasonably be expected to be cured, corrected or resolved within 6 months. Monthly payments by TVCN to Front Range will be suspended on a day by day pro rata basis during any such prohibited period.

13.2 Termination by Reason of Default and Nonperformance. At the option of the non-defaulting party, this Agreement may be terminated upon the material breach or default by the other party of its duties and obligations hereunder if such breach or default shall continue for a period of thirty (30) consecutive days after such party's receipt of written notice thereof from the non-defaulting party, provided that such default has not been remedied. Failure to provide any consideration required under Paragraph 6 hereof shall, if such failure continues for a period of thirty (30) days after written notice thereof to TVCN, constitute a material breach of this Agreement by TVCN and, in such event, Front Range may elect to cancel and terminate this Agreement. In the event of termination pursuant to this Paragraph 13.2, such termination shall not affect or diminish the right or claims or remedies available in equity or at law to the non defaulting party arising by reason of such breach or default.

14. Miscellaneous.

14.1 Force Majeure. Notwithstanding anything contained in this Agreement to the contrary, neither party shall be liable to the other for failure to perform any obligation under this Agreement (nor shall any charges or payments be made in respect thereof) if prevented from doing so by reason of fires, strikes, labor unrest, embargoes, civil commotion, rationing, or other orders or requirements, acts of civil or military authorities, acts of God, acts or omissions of

carriers or other contingencies beyond the reasonable control of the parties, and all requirements as to notice and other performance required hereunder within a specified period shall be automatically extended to accommodate the period of pendency of any such contingency which shall interfere with such performance.

14.2 Specific Performance. The parties acknowledge and agree that all of the rights reserved to TVCN and to Front Range hereunder are necessarily of a special, unique, unusual and extraordinary character, which gives them a peculiar value, the loss of which cannot be adequately or reasonably compensated for in damages in an action at law, and the breach by either party of any of the provisions of this agreement will cause the other party irreparable injury and damage. In such event, the non-breaching party shall be entitled, as a matter of right, without further notice, to require of the other party specific performance of all of the acts, services and undertakings required hereunder including the obtaining of all requisite authorizations to execute or perform this Agreement and to obtain injunctive and other equitable relief in any competent court to prevent the violation or threatened violation of any of the provisions of this Agreement. Neither this provision nor any exercise by TVCN or Front Range of its rights to equitable relief or specific performance herein granted shall constitute a waiver by TVCN or Front Range of any other rights which it may have to damages or otherwise.

14.3 Indemnification and Insurance. Each party shall maintain in effect during the term of this lease insurance of not less than one million dollars including broadcaster's errors and omissions liability, property damage and public liability including the operation vehicles under all of which the other party is the named co-insured to indemnify the other party against any and all claims, damages, demands, losses, penalties, costs, including attorney's fees, or other liabilities arising out of the operation of the ITFS system and the Wireless Cable System, including but not limited to patent and copyright infringement, defamation, and other invasion of rights. To the extent that any claims or damages demand losses, penalties, costs or other liabilities are not covered by insurance the offending party shall be liable to the other for such excess. which shall be in contravention of the applicable provisions of Paragraph 14.13 hereof.)

14.4 Notice. Any notice required to be given by either party to the other party shall be deemed to have been sufficiently given if in writing, deposited in the United States mail in a sealed envelope with postage thereon prepaid and registered, and addressed to Front Range or to TVCN, as the case may be, at the last known principal business address of each such party.

14.5 Announcements. No announcement to the press or to any unaffiliated third party of the transactions contemplated herein shall be made by either party unless the same shall be approved in advance by both TVCN and Front Range.

14.6 Severability of Provisions. If any provision of this Agreement is held to be invalid, the remainder of this Agreement shall not be affected thereby, unless the invalidation of the provision frustrates the underlying intentions and purposes of the parties as set forth in this Agreement.

14.7 Entire Agreement. This Agreement states the entire agreement as of this date between TVCN and Front Range with respect to the subject matter and supersedes all pre-existing oral, letter or other agreements or commitments with respect hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, subject, however, to the provisions of Paragraph 14.13 hereof restricting assignment.

14.8 Payment of Expenses. Except as otherwise provided herein, Front Range and TVCN shall pay their own expenses incident to the preparation and carrying out of this Agreement, including all fees and expenses of their respective counsel.

14.9 Further Action. From time to time after the date of execution hereof, the parties shall take such further action and execute such further documents, assurances and request of the other in order to effectuate the purposes of his Agreement.

14.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and shall become effective when each of the parties hereto shall have delivered to it this Agreement duly executed by the other party hereto.

14.11 Headings. The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof.

14.12 Dealings With Third Parties.

14.12.1 Neither party is, nor shall either party hold itself out to be, vested with any power or right to contractually bind, act on behalf of the other as its contracting broker, agent or otherwise for committing, selling, conveying or transferring any of the other party's assets or property, contracting for or in the name of the

other party, or making any contractually binding representations as to the other party which shall be deemed representations contractually binding such party. In particular, TVCN shall not be identified as licensee of the ITPS Channels and Front Range shall not be held out as the programmer of the ITPS air time programmed by TVCN.

14.12.2 Each party shall forever protect, save and keep the other party harmless and indemnify said other party against and from any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities of any kind or nature whatsoever arising directly or indirectly out of the negligence or willful misconduct of the other party, its agents or employees in connection with the performance of this Agreement.

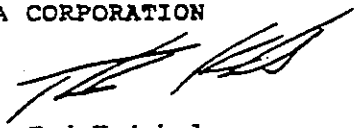
14.13 Governing Law. This Agreement shall be construed under and in accordance with the laws of the State of Colorado, the Communications Act of 1934, as amended, and the rules and policies of the FCC.

15. Arbitration.

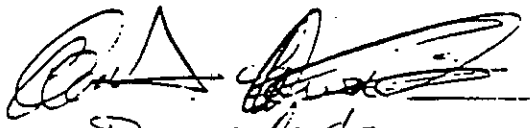
In order to minimize the burdens and costs to the parties of any controversy with respect to the application and interpretation of any of the provisions of this Agreement, the parties agree that unless such controversy can be adjusted and settled amicably, the parties will submit the matter to arbitration, according to the rules of the American Arbitration Association. The decision of the arbitrator(s) shall be binding upon the parties and enforceable under applicable law. The costs of arbitration, excluding legal representation of the parties, shall be shared equally.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first written above.

FRONT RANGE EDUCATIONAL
MEDIA CORPORATION

By: 
Ted Krichels
Its: General Manager

TELEVISION COMMUNICATIONS
NETWORK

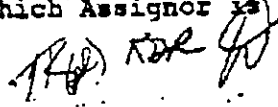
By: 
Its: President

CERTIFICATION OF VALIDITY AND CONSENT TO ASSIGNMENT

CERTIFICATION OF VALIDITY AND CONSENT TO ASSIGNMENT, dated this 20th day of DECEMBER, 1993 by and between TV Communications Network, Inc. ("Assignor"), having its principal place of business at 10020 East Girard Avenue, Suite 300, Denver, Colorado 80231; ~~Front Range Education Media Corporation ("FREM")~~ ^{of} Denver, having its principal place of business at 2246 Federal Boulevard, Denver, Colorado 80211; and American Telecasting, Inc. ("Assignee"), a Delaware corporation having its principal place of business at 4065 North Sinton Road, Suite 201, Colorado Springs, Colorado, 80907.

WHEREAS, FREM and Assignor are parties to that certain "Agreement" dated March 25, 1988 and addendum dated December 11, 1990 (the "Agreement") related to the "C" Group FRS authorization for Boulder and Denver, Colorado; and

WHEREAS, Assignor and Assignee have negotiated that certain "Purchase and Sale of Assets Agreement" pursuant to which Assignor has agreed to assign to Assignee and Assignee has agreed to assume, upon fulfillment of certain conditions precedent, certain agreements to which Assignor is a party, including the Agreement; and


WHEREAS,  the Agreement requires the prior written consent of FREM to an assignment of the Agreement with FREM; and

WHEREAS, the parties recognize that it is in their mutual interest for the Assignor to assign to Assignee, and for the Assignee to assume all obligations under the Agreement.

NOW, THEREFORE, in connection with the consummation of the Purchase and Sale of Assets Agreement, the parties hereto agree as follows:

1. Certification of Agreement. Assignor and FREM each certify that, to the best of their knowledge and belief, the Agreement is in full force and effect on the date hereof and that both parties to the Agreement are in compliance with all material terms and conditions thereof. This certification is given with the intent that it be relied upon by Assignee.

2. Consent to Assignment of the Agreement. FREM hereby consents to the assignment of the Agreement to Assignee, provided that, at the time of such assignment, the Agreement is in full force and effect and Assignor is not in default thereof, including but not limited to, Assignor having made all payments due FREM up to and including the time of such assignment as required by the Agreement.

 3. Assignee's Agreement and Acknowledgement. Assignee hereby agrees that if the transaction contemplated in the Purchase and Sale of Assets Agreement is consummated, Assignee assumes and agrees to perform and timely discharge all obligations of Assignor under the Agreement, including without limitation, the payment of and any and all sums due thereunder, and Assignee agrees otherwise to be bound by the terms and conditions of the Agreement. This document does not constitute

RDR a release by FM in favor of Assignor for any purpose, and Assignor remains bound under the terms of the Agreement. If for any reason the transaction contemplated in the Purchase and Sale of Assets Agreement is not consummated in accordance with its terms, this document and FREM's signature at the end hereof shall be deemed null and void.

43. Counterparts. This Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties have affixed their hands and seals on the date first above-written.

TV COMMUNICATIONS NETWORK, INC.

FRONT RANGE EDUCATIONAL MEDIA CORPORATION


Kenneth D. Roznoy,
Vice President


Ted Krichels,
General Manager

 of Denver
AMERICAN TELECASTING, INC.

Brian E. Gast, President

Denver, CO

C4

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WLX526

20574 Rpts

ITFS EXCESS CAPACITY AIRTIME LEASE AGREEMENT

DENVER, COLORADO

APRIL 23, 1991

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the entire spectrum of frequencies in the band 2500-2700 MHz which are licensed to Lessor.

WHEREAS, Lessee intends to enter into other ITFS, Operational-Fixed Microwave Service ("OFS"), Multipoint Distribution Service ("MDS"), or Multichannel Multipoint Distribution Service ("MMDS") channel leases with other licensees and applicants in the Metropolitan Area so as to increase the number of channels of programming Lessee is able to deliver to its subscribers. The network of co-located channels thus created shall hereinafter be described as "Lessee's System".

WHEREAS, Lessor has determined that there will be excess airtime capacity available on the ITFS Channels utilized for Lessor's educational needs and that this excess airtime capacity is available for commercial programming. Lessor has further determined that by combining its educational programming with Lessee's commercial programming, a significant increase may be achieved in the number of persons who will have access to Lessor's educational programming at little or no additional cost. Since the dissemination of educational programming is significantly increased as a result of the integrated system, it is consequently determined that each channel is being used for ITFS purposes in serving the good of the public.

NOW THEREFORE, in consideration of the mutual promises, undertakings, covenants and conditions set forth herein, the Lessor and Lessee do hereby agree and warrant as follows:

1. TERM OF AGREEMENT.

A) Initial Term. This Agreement shall be effective upon the date of its execution and the term shall begin on the Start Date as defined in Paragraph 11 hereof and extend for an initial period of five (5) years. Such period is hereinafter referred to as the "Initial Term".

B) Renewal Term. Provided Lessee's rights have not been terminated pursuant to Paragraph 9(a), this Agreement shall automatically and without further notice be extended for one (1) additional term (such additional term is hereinafter referred to as the "Renewal Term") of five (5) years unless and until Lessee shall have served written notice on Lessor at least sixty (60) days prior to the expiration date of the Initial Term that Lessee elects not to renew this Agreement for the Renewal Term. It is acknowledged and agreed that Lessee shall have the absolute right not to renew this Agreement notwithstanding any provision hereof to the contrary.

C) New Lease Agreement/Right of First Refusal. Providing that Lessor's FCC license remains in good standing and/or Lessor seeks to renew such license, Lessee and Lessor shall enter into discussions and potential negotiations for a new excess capacity airtime lease agreement (hereinafter referred to as "New Lease Agreement") no later than two hundred seventy (270) days prior to the end of the Renewal Term. If Lessor elects to not reasonably pursue a New Lease Agreement with Lessee, then Lessor shall so notify Lessee in writing of such intent no later than one hundred

eighty (180) days prior to end of the Renewal Term. If Lessor and Lessee do not enter into a New Lease Agreement, Lessor grants Lessee a right of first refusal on any competing proposals for lease agreements or transfers or assignments of any part of the ITFS Channels received by Lessor until twelve (12) months after the expiration of the Renewal Term. If any acceptable offer to lease or acquire the ITFS Channels is made to Lessor, Lessor shall give written notice to Lessee describing the person to whom the proposed lease or transfer is to be made, the fees, charges, rental or other consideration to be received for the lease or transfer, the terms thereof and generally the relevant other terms and conditions of the lease or transfer. Lessee shall have a period of thirty (30) days after its receipt of such notice from Lessor in which to elect, by giving written notice to Lessor, to lease or, if eligible, obtain any or all of the ITFS Channels for the same fees, charges, rental or other consideration for which Lessor proposed to lease or transfer to the third person.

If the fees, charges, rental or consideration to be paid by such third person are to be in whole or in part in a form other than cash, the consideration to be paid by Lessee shall be in cash in an amount fairly equivalent to the fair value of the consideration payable by the third person and shall be so stated by Lessee as a sum certain in its notice of election.

If Lessor does not believe Lessee's stated offer is in an amount fairly equivalent to the fair value of the consideration

payable by the third person and so notifies Lessee in writing within seven (7) days after Lessor's receipt of Lessee's notice of election to so lease or purchase, Lessee may within five (5) days after its receipt of such notice from Lessor elect to refer such question for determination by an impartial arbitrator and the right of first refusal of Lessee shall then be held open until five (5) days after Lessee is notified of such determination. Such arbitrator shall be chosen either by agreement of Lessee and Lessor at the time such question arises, or, at the option of either party, by referring the question to the American Arbitration Association with instructions that the American Arbitration Association select a single arbitrator under a request from the parties for expedited and accelerated determination. The determination of the arbitrator chosen under either option contained in this subparagraph shall be final and binding upon Lessee and Lessor. The parties shall share equally in the costs and fees of the Arbitration.

In the event Lessee shall elect to exercise its right of first refusal, the lease agreement or other transfer or assignment shall be consummated within thirty (30) days of the latest of: (1) the day on which Lessor received notice of Lessee's election to exercise the right of first refusal; (2) the day upon which any question required to be determined by the arbitrator hereunder has been determined; or (3) the date of any FCC approval in the case of assignment or transfer; or at such other time as may be mutually agreed. The right of first refusal

is terminated either by the lease or other transfer to Lessee as provided herein or by notice to Lessee of the Lessor's proposal to lease or otherwise transfer the ITFS Channels or any part to a third person and Lessee's unwillingness or failure to meet and accept such a bona fide offer pursuant to the times and procedures as set forth above; provided that such proposed lease or transfer is consummated at the same fees, charges, rental or other consideration and upon the same terms as to which such right of first refusal applied, within thirty (30) days after Lessee's right of first refusal had expired or had been specifically waived by written notice given to Lessor by Lessee, or within thirty (30) days following FCC approval in the case of assignment or transfer.

D) Operation During End of Term. If Lessor and Lessee do not enter into a New Lease Agreement before the end of the Renewal Term, Lessee shall cease leasing the ITFS Channels on the last day of the Renewal Term.

E) No Rights Beyond Term of Licenses. Lessor and Lessee agree that this Agreement shall not give rise to any rights or remedies beyond the expiration of any FCC license necessary for the continued operation of the ITFS Channels, whether such expiration occurs during the Initial Term or the Renewal Term. Provided, however, that while this Agreement is in effect, Lessor shall obtain and maintain in force all licenses, permits and authorizations required or desired in connection with the use of the ITFS Channels. Lessor shall take all necessary steps to

payable by the third person and so notifies Lessee in writing within seven (7) days after Lessor's receipt of Lessee's notice of election to so lease or purchase, Lessee may within five (5) days after its receipt of such notice from Lessor elect to refer such question for determination by an impartial arbitrator and the right of first refusal of Lessee shall then be held open until five (5) days after Lessee is notified of such determination. Such arbitrator shall be chosen either by agreement of Lessee and Lessor at the time such question arises, or, at the option of either party, by referring the question to the American Arbitration Association with instructions that the American Arbitration Association select a single arbitrator under a request from the parties for expedited and accelerated determination. The determination of the arbitrator chosen under either option contained in this subparagraph shall be final and binding upon Lessee and Lessor. The parties shall share equally in the costs and fees of the Arbitration.

In the event Lessee shall elect to exercise its right of first refusal, the lease agreement or other transfer or assignment shall be consummated within thirty (30) days of the latest of: (1) the day on which Lessor received notice of Lessee's election to exercise the right of first refusal; (2) the day upon which any question required to be determined by the arbitrator hereunder has been determined; or (3) the date of any FCC approval in the case of assignment or transfer; or at such other time as may be mutually agreed. The right of first refusal

is terminated either by the lease or other transfer to Lessee as provided herein or by notice to Lessee of the Lessor's proposal to lease or otherwise transfer the ITFS Channels or any part to a third person and Lessee's unwillingness or failure to meet and accept such a bona fide offer pursuant to the times and procedures as set forth above; provided that such proposed lease or transfer is consummated at the same fees, charges, rental or other consideration and upon the same terms as to which such right of first refusal applied, within thirty (30) days after Lessee's right of first refusal had expired or had been specifically waived by written notice given to Lessor by Lessee, or within thirty (30) days following FCC approval in the case of assignment or transfer.

D) Operation During End of Term. If Lessor and Lessee do not enter into a New Lease Agreement before the end of the Renewal Term, Lessee shall cease leasing the ITFS Channels on the last day of the Renewal Term.

E) No Rights Beyond Term of Licenses. Lessor and Lessee agree that this Agreement shall not give rise to any rights or remedies beyond the expiration of any FCC license necessary for the continued operation of the ITFS Channels, whether such expiration occurs during the Initial Term or the Renewal Term. Provided, however, that while this Agreement is in effect, Lessor shall obtain and maintain in force all licenses, permits and authorizations required or desired in connection with the use of the ITFS Channels. Lessor shall take all necessary steps to

renew the licenses for the ITFS Channels and shall not commit any act or engage in any activity which could reasonably be expected to cause the FCC to impair, restrict, revoke, suspend or refuse to renew the ITFS licenses. Lessor shall take all reasonable steps to comply with the Communications Act of 1934, as amended and the rules and regulations of the FCC, and shall timely file all reports, schedules and/or forms required by the FCC to be filed by Lessor. In accordance with Paragraph 8, all expenses, including attorneys fees and filing fees, incurred in preparing and filing such reports, schedules and/or forms required by the FCC shall be paid by the Lessee.

2. ALLOCATION OF AIRTIME.

A) Excess Capacity Airtime. To the extent allowed by the FCC rules and regulations and any amendments thereof, Lessor agrees to lease to Lessee the exclusive use of all excess capacity airtime on Lessor's ITFS Channels as more fully set forth herein. As used in this Agreement, the phrase "Excess Capacity Airtime" means all airtime on the ITFS Channels apart from "Lessor's Primary Airtime" and when applicable "Lessor's Ready Recapture Airtime".

B) Lessor's Primary Airtime. Lessor reserves for each channel licensed the minimum number of hours of airtime each week (Monday through Saturday) required by the FCC rules to be used for its ITFS scheduled programs aired between the hours of 8:00 a.m. and 10:00 p.m.; provided however, that such reserved airtime include a minimum of three (3) hours per weekday (Monday through

H) Significant Reduction in Lessee Airtime. In the event a Significant Reduction in Lessee's Airtime occurs, Lessee shall have each of the following three rights, each of which may be exercised from time to time during this Agreement without prejudice to Lessee's subsequent exercise of another of these rights.

i) If the additional ITFS programming sought to be broadcast by Lessor may be broadcast during unscheduled Airtime on Lessee's System, Lessee shall so notify Lessor and the ITFS programming shall be broadcast during that time period. Also if Lessee presents Lessor with other methods of reasonably accommodating Lessor's increased scheduling needs, then Lessor agrees to use its best efforts in cooperating with Lessee to implement those other methods.

ii) Lessee shall also have the right to require Lessor to file for a license modification with the FCC for the technical channel expansion of one or more of the ITFS Channels by use of Comband (TM) or any other broadcast compression system approved by the FCC. The expanded channels thereby created shall be referred to hereinafter as "The Expanded Channels". Upon approval by the FCC of such license modification, Lessee agrees, at its expense, to purchase and install all equipment necessary to complete such license modification. Any equipment so used in such construction shall be leased to Lessor pursuant to Paragraph 5 hereof. Once the Expanded Channels have been constructed, they shall automatically and without further amendment be considered a part of this

agreement and subject to all terms and conditions hereof. Lessor and Lessee shall agree upon the allocation of time over the Primary and Expanded Channels so as to fulfill Lessor's ITFS programming requirements that gave rise to the Significant Reduction of Lessee's Airtime. In so doing, the parties shall use their best efforts to minimize the additional capital costs to be incurred by Lessee as the result of the construction of the Expanded Channels.

iii) Lessee may at any time terminate this agreement without penalty or further liability to Lessor upon notice to Lessor. Alternatively, Lessee may reduce in proportionate amount the amount of transmission fees and subscriber royalty fees payable under the provisions of Paragraphs 6(B) and 6(C) of this Agreement during the remainder of the terms of this Agreement.

I) Lessor's Use of ITFS Channels. Lessor recognizes the mutual benefits and technological advantages of the use of encoding methods for program security, equipment signaling and individual addressability control over unauthorized equipment use. Lessor agrees that its program services and airtime use will not harm or interfere with Lessee's current or future signal paths utilized within Lessee's System for program encryption, pilot carrier signaling and other technical needs utilized for the operation of and such services provided by Lessee's System. Nor will Lessor, by its own action, or through a third party, utilize any part of its licensed frequency spectrum to create or

operate a service that is in competition with current, planned or future services provided by Lessee's System.

J) Expanded System Capacity. Lessee shall have the right at anytime to require Lessor to file with the FCC any necessary application to expand the channel capacity to Lessor's station to enable it to carry more than one video signal per channel; provided however, before Lessee can exercise this right, it must demonstrate to the Lessor's reasonable satisfaction that such modification will not materially degrade the performance of the station nor impair signal quality at the ITFS receive points. Once such modification has been constructed, the modified facilities shall automatically be considered a part of this agreement and subject to all terms and conditions hereof; provided however, that the transmission fee and subscriber royalty fee payable to Lessor under the provisions of Paragraphs 6(b) and 6(c) of this Agreement shall be increased in a proportionate amount equal to the increased number of channels available to Lessee under this paragraph. It is understood that Lessee shall have the full time use of the Expanded Channels to the extent permitted by FCC rules.

3. TRANSMISSION SITE AND FACILITIES.

A) Transmission Site. Upon execution of this Agreement, Lessee and Lessor shall together select a mutually acceptable location for the Transmission Site for the provision of the services contemplated by this Agreement. This site shall hereinafter be described as the "Transmission Site". At Lessee's sole expense, Lessee shall contract for a lease of space at the Transmission Site upon such terms as the parties agree. The Transmission Site shall comply with the standards, specifications and regulations of the FCC rules and orders pertaining to Lessor's ITFS license. At Lessee's sole expense pursuant to Paragraph 8, Lessor shall file the appropriate applications with the FCC to secure authorization to operate the ITFS Channels from the Transmission Site. If upon reviewing Lessor's ITFS application the FCC directs Lessor to amend its application, including the terms and conditions of this Agreement, in order to bring the application in compliance with FCC regulations and guidelines for a conditional construction permit or license, the parties shall immediately negotiate in good faith toward the necessary revisions. Again at Lessee's sole expense pursuant to Paragraph 8, Lessor shall file such agreed revisions to its FCC applications. If the parties hereto cannot agree upon such revisions, then this Agreement shall be terminated without further liability.

B) System Construction. Upon issuance by the FCC of an authorization for the ITFS Channels at the Transmission Site,

Lessee shall within a reasonable period of time, but not later than nine (9) months thereafter, begin construction of the ITFS Channel transmission facilities. At its expense, Lessee shall purchase and install such transmitters, transmission line, modulators, antennas and other equipment as required to operate the ITFS Channels in accordance with the provision of such authorization. Any equipment so used in such construction shall be leased to Lessor pursuant to Paragraph 5 hereof. Such equipment is hereinafter referred to as the "Leased Equipment". Lessee further agrees throughout the term of this Agreement to provide Lessor with sufficient space at the Transmission Site for any equipment required to provide for Lessor's audio and video transmission needs for its ITFS programming. Lessee shall retain title to the Leased Equipment except as noted by Paragraph 15 herein.

C) Maintenance of Transmission Equipment. At Lessor's expense and subject to Lessor's right to supervise the maintenance of this equipment, Lessee shall maintain and operate the Leased Equipment during the terms of this Agreement for a nominal fee. Lessee shall also pay all taxes and other charges assessed against the Leased Equipment.

D) Transmission of Programming. At no cost or expense to Lessor, Lessee shall provide the necessary labor and production capabilities to transmit on the ITFS Channels all programming required to be carried pursuant to this Agreement such as Lessor's ITFS programming. Such labor shall include, but not be

limited to, the transmission of tapes provided by Lessor, the reception and recording of satellite delivered programming and the transmission of recorded programming. Subject to reasonable notice, Lessee shall also comply with Lessor's reasonable instructions regarding the transmission of such programming such as the dates and times to transmit programming in accordance with the Schedule of Airtime.

E) Interference. Lessee shall operate the Leased Equipment so that such operation does not create or increase interference with electronic transmission of any other FCC licensees entitled to protection under FCC rules and regulations. If Lessee's operation of the Leased Equipment does so create or increase interference, Lessee shall pay all of the reasonable engineering and legal fees necessary to resolve the interference problem so created.


F) Alterations and Attachments. Lessee, at its own expense, may make alterations of or attachments to the ITFS Equipment or the Common Equipment (including the installation of encoding and/or addressing equipment) as may be reasonably required from time to time by the nature of its business; provided however, that such alterations or attachments do not interfere with Lessor's signal or ongoing operations or violate any FCC rules or regulations; and provided further that FCC authorization, if required, is obtained in advance of any such alteration or attachment at the sole cost of Lessee. To the extent any FCC authorization pertaining to the ITFS Equipment is

required, Lessor agrees to use its best efforts to obtain such authorization.

G) Increase In Authorized Transmission Power Requirements.

If Lessee determines during the term of this Agreement that an increase in transmitter power is reasonably necessary to better serve Lessee's customers and those of Lessor, Lessor shall execute the necessary applications to achieve such increased transmitter power. Lessee shall, at its cost, perform such re-engineering studies as may be reasonably necessary and, upon completion of such re-engineering studies, Lessor shall, at Lessee's cost, file the appropriate applications with the FCC to secure approval for such increased transmitter power. Upon approval of any such application by the FCC, Lessee shall at its expense forthwith commence to upgrade the ITFS Channel transmission facilities in accordance with such FCC authorization.

H) Licensee Control and Liability. Nothing herein shall derogate from such licensee control of operations of the ITFS Channels that Lessor, as an FCC licensee, shall be required to maintain and Lessee acknowledges the reservation by Lessor of such control. Lessor shall at all times retain ultimate and exclusive responsibility for the operation and control of the ITFS Channels including policy decisions.

I) Studio to Transmitter Link. In the event that the Transmission Site is at a location removed from Lessee's studio  and ~~or~~ other operating facilities, Lessee shall, subject to any

required FCC approval and at its sole cost and expense, provide for the transmission of Lessor's ITFS programming from Lessee's studio or other operating facilities to the Transmission Site. The choice of the type of facility used for transmitting from Lessee's studio or other operating facility to the Transmission Site, whether a microwave link, hard wire connection or other medium of transmission (hereinafter referred to as an "STL"), shall be at the Lessee's discretion. If Lessor is required to be the licensee of such STL, Lessor shall make application to the FCC for such license, however, Lessee shall be responsible for all expenses and costs incurred in obtaining an FCC authorization. Upon installation and commencement of operation, Lessee shall lease such STL to Lessor at an annual rental of one dollar (\$1.00) for the duration of this Agreement. Operation of such STL shall be in the sole control of Lessor or as otherwise required by the FCC.

4. LESSOR'S RECEIVE SITES.

Upon the filing of the ITFS application, there shall be attached hereto and incorporated herein as Exhibit B a copy of FCC Form 330, Section IV listing the receive sites designated by Lessor to receive its ITFS programming. Each receive site designated by Lessor, up to a maximum of six (6) sites, shall be installed at the expense of Lessee with a Standard Installation and Lessee shall provide up to three (3) standard television receivers ("TVs") and three (3) video cassette recorders ("VCRs") to Lessor for distribution to receive sites; provided, however,

that the total cost for the TVs, VCRs and Standard Installation at all such receive sites, TVs and VCRs does not exceed five thousand dollars (\$5,000). As used herein for the purposes of this Agreement, the phrase "Standard Installation" shall consist of the following: (i) placement of the ITFS/MMDS receiving antenna at an elevation (not to exceed thirty (30) feet above the base mounting location), which could normally receive the line of sight transmission from the Transmission Site, (ii) the coupling thereto of a block down converter and (iii) a sufficient amount of transmission line (coaxial cable) to connect the received ITFS programming to either each classroom designated by Lessor to receive the ITFS programming or the receive site internal distribution system. Also, if as the result of any relocation of the Transmit Site, the equipment at Lessor's existing receive site must be reoriented, Lessee shall pay the cost of same.

5. LEASE OF EQUIPMENT.

A) Lessor's Lease of Leased Equipment. For a nominal fee, Lessor shall lease from Lessee the Leased Equipment during the terms of this Agreement. A list of this equipment is attached hereto as Exhibit C and incorporated by reference herein. Lessor shall have no responsibility for the loss of or damage to the Leased Equipment during the terms of this Agreement and Lessee shall bear all such responsibility.

6. FEES.

A) Lessor's Service Fee. In consideration of the lease of the Leased Equipment, and for its share of the projected costs to

maintain the Transmission Site and the Leased Equipment, Lessor shall pay Lessee an annual service fee provided for in Exhibit D.

B) Lessee's Transmission Fee. Commencing on the date of completion of construction at the Transmission Site and continuing thereafter during the Initial and Renewal Terms of this Agreement, if any, Lessee shall pay to Lessor the Monthly Transmission Fee provided in Exhibit D which is attached hereto and incorporated by reference herein.

C) Subscriber Royalty Fees. Commencing on the date of completion of construction at the Transmission Site and continuing thereafter during the Initial and Renewal Terms of this Agreement, if any, Lessee shall pay to Lessor the Subscriber Royalty Fee provided in Exhibit D which is attached hereto and incorporated by reference herein. All computations of subscriber royalty fees herein shall be based upon the average number of subscribers subscribing to Lessee's pay television programming service. As used herein, the term "Subscriber" means a person who is paying for Lessee's basic (first tier or entry level) programming service. For purposes of this paragraph, the average number of subscribers shall equal the number of subscribers as of the last day of the prior month plus the number of subscribers as of the last day of the current month divided by two. For purposes of this paragraph in situations where programming is sold in bulk (that is, where a number of viewing units are grouped for billing purposes--such as may be the case with hotels and some multiple dwelling units), the number of equivalent

subscribers shall be determined by dividing the total monthly revenues derived from such bulk billing point by Lessee's then prevailing retail monthly rate for the equivalent programming service to individual subscribers in the Metropolitan Area. If the date of completion of construction at the Transmission Site shall be a date other than the first day of a calendar month or this Agreement shall be terminated on a date other than the last day of a calendar month, then the Subscriber Royalty Fee for that partial month shall be paid on a proportionate basis.

D) Notice of Construction and Required Certificate. Within thirty (30) days of completion of construction at the Transmission Site, Lessee shall notify Lessor in writing of the date of such completion of construction. Within thirty (30) days of the end of each month in which Excess Capacity Airtime is leased hereunder, Lessee shall provide Lessor with a certificate, certified as accurate and correct by an authorized agent of Lessee, showing the average number of subscribers served during such month.

E) Right to Audit. Lessee shall for a period of three (3) years after their creation, keep, maintain and preserve complete and accurate records and accounts, including all invoices, correspondence, ledgers, financial and other records pertaining to Lessee's use of Excess Capacity Airtime and Lessor's charges hereunder; and such records and corporate accounts shall be available for inspection and audit at Lessee's corporate offices or at Lessee's offices in the Metropolitan Area, as designated by

Lessee, at any time or times during the term of this Agreement or within ninety (90) days thereafter, during reasonable business hours, by Lessor or its nominee. Notwithstanding the foregoing, Lessor shall be entitled to only one audit of Lessee's records and accounts during any calendar year and such audit shall be limited to the records and accounts of Lessee for the immediately preceding twelve (12) months, unless an error exceeding ten percent (10%) of the total is found, in which case Lessee's records and accounts of the immediately preceding three (3) years may be inspected. Lessor shall provide Lessee with fifteen (15) business days advance notice of its intent to inspect such records and accounts prior to being allowed to do so. All information obtained by Lessor during any audit herein shall be maintained by Lessor in strict confidence.

7. PROGRAMMING.

A) Control Over Programming.

1) Program Content.

Lessee intends that only programming of a sort which would not serve to place Lessor's reputation in the community in jeopardy will be transmitted by Lessee on the ITFS Channels. In an attempt to minimize disputes, recognizing the difficulties inherent in specifying exact standards herein, it is agreed that Lessee shall have the right to market the programming provided by the networks and services listed on Exhibit E. If, however, the programming content of any of the networks and services listed on Exhibit E materially changes, Lessor shall have the right, upon

determination. With regard to the right to refer the question of programming costs to an arbitrator, such arbitrator shall be chosen either by agreement of Lessee and Lessor or, at the option of either party, by referring the question to the American Arbitration Association with instructions that the American Arbitration Association select a single arbitrator under a request from the Parties for expedited and accelerated determination. The determination of the arbitrator chosen under either option contained in this paragraph shall be based upon consideration of programming of a similar type and relative expense as used in the first year of this Agreement and shall be final and binding upon Lessor and Lessee. The Parties shall share equally in the costs and fees of the Arbitration.

C) Integration of Lessor's Programming. Lessee agrees to integrate Lessor's programming into the overall communications service offered to subscribers, without cost to Lessor. This integration shall include, but not be limited to, listing Lessor's material in any program guides produced by Lessee for subscribers.

D) Station Identification. To the extent required by FCC rules, Lessee shall transmit the call sign of Lessor's ITFS station over each ITFS Channel.

8. PROSECUTION OF PETITIONS, AUTHORIZATIONS AND LICENSES.

A) Best Efforts to Secure Approval of this Agreement. The parties recognize that certain approvals will be required from the FCC in order to effectuate this Agreement. Both parties

shall use their best efforts to prepare, file and prosecute before the FCC all petitions, waivers, applications and other documents necessary to secure any FCC approval required to effectuate this Agreement. Lessee shall assist in the preparation and prosecution of such applications and as provided for herein, shall pay all filing fees, attorney's fees, engineering fees, and all other expenses in connection therewith provided Lessee has approved of such fees and expenses in advance. Lessor also agrees to cooperate with Lessee's efforts to cause other ITFS, OFS, MDS and MMDS operators to co-locate at the Transmission Site. Notwithstanding anything in this Agreement to the contrary, it is understood that no filing shall be made with the FCC with respect to this Agreement unless both parties have reviewed such filing and consented in writing to its submission, such consent not to be unreasonably withheld.

B) Further Efforts. Throughout the Initial Term and the Renewal Term of this Agreement, Lessor shall use its best efforts to obtain and maintain in force all licenses, permits and authorizations required for Lessee and Lessor to use the ITFS Channels as contemplated by this Agreement. Lessee shall be responsible for all expenses incurred to obtain and maintain in force such licenses, permits and authorizations provided Lessee has approved of such fees and expenses in advance. When mutually agreed by the parties and at Lessee's sole expense, Lessor shall apply for, and use its best efforts to obtain those reasonable license modifications which would assist Lessee in its business.

Lessor also shall consider filing, at Lessee's sole expense, such reasonable protests, comments or other petitions to deny any other ITFS, MMDS, MDS and/or OFS applications or amendments as may be requested by Lessee in the mutual best interests of the parties and the public. Lessor and Lessee shall promptly notify each other of any event of which it has knowledge that may affect any of the licenses, permits or authorizations affecting the ITFS Channels.

C) Attorneys Fees. With respect to any legal work conducted pursuant to paragraphs 8(A) and (B) above, the parties agree to employ the law firm of Pepper & Corazzini, 1776 K Street, N.W., Suite 200, Washington, D.C. 20006. Lessee shall be responsible for all attorneys fees in connection therewith and shall make payments directly to Pepper & Corazzini.

9. TERMINATION.

A) Termination of FCC Authorization. Without further liability to either Lessor or Lessee, this Agreement shall terminate in the event that for any reason (i) Lessor shall not be licensed on the leased ITFS Channels, or (ii) the FCC shall terminate or diminish Lessor's authority to lease the ITFS Channels in accordance with the terms of this Agreement.

B) Termination by Reason of Default. At the option of the non-defaulting party, this Agreement may be terminated upon the material breach or default by the defaulting party of its duties and obligations hereunder if such breach or default is not cured by such defaulting party and if such breach or default shall

continue for a period of thirty (30) consecutive days after such defaulting party's receipt of notice thereof from the non-defaulting party, or in the case of a breach or default which is not capable of being cured in such thirty (30) day period, if the party in breach or default does not, within such thirty (30) day period, commence and diligently pursue steps to cure such breach or default. It is understood and agreed that any failure on the part of Lessee to make any payment required under Paragraph 6 hereof shall be a material breach or default of its duties and obligations hereunder. It is also understood and agreed that any consequences resulting from the loss of local participating receive sites for reasons that are not the fault of Lessor shall not be considered a material breach or default by Lessor of its duties and obligations hereunder.

C) Termination at Lessee's Option. At the option of the Lessee, this Agreement may be terminated, without liability, within six (6) months from the date granting Lessor a license for the ITFS Channels. Within five (5) days of Lessee's exercise of the right to terminate the Agreement pursuant to this paragraph, Lessee shall notify Lessor in writing of such termination.

D) Remedies to Continue. In the event of termination of this Agreement pursuant to Paragraph 9(B), such termination shall not affect or diminish the rights or claims or remedies available in equity or at law to the non-defaulting party arising by reason of a breach or default of this Agreement. However, no liability shall arise on the part of Lessor or Lessee upon termination of

this Agreement pursuant to paragraphs 9(A) or 9(C) except where a loss of the FCC license occurs as a result of the default of either party.

10. TRANSFER OF RIGHTS AND OBLIGATIONS.

Lessee shall have the right to assign its rights under this lease as collateral for any financing arrangements it makes. Lessee shall also have the right to pledge the Leased Equipment as collateral security for any loans it makes; provided however, that any pledge of the Leased Equipment shall be made subject to the provisions of this lease. Lessee shall further have the right to subcontract any portion of its obligations under this Agreement to any partnership, joint venture, corporation or entity which Lessee may choose, provided that Lessee gives Lessor notice of any proposed subcontracting and, provided further, that no such subcontracting shall release Lessee from fulfilling all of its obligations under this Agreement. Lessee shall have the right to assign or transfer its rights, benefits, duties and obligations under this Agreement to a commonly-owned company without the prior consent of Lessor. Lessee shall have the right to assign or transfer its rights, benefits, duties or obligations under this Agreement to a third party without the prior consent of Lessor if the third party prepays to Lessor at the time of such assignment or transfer one year's Transmission Fee and an estimated one year's Subscriber Royalty Fee subject to any final adjustments; otherwise Lessee shall obtain the prior written consent of Lessor. Finally, Lessor may not assign or transfer

its rights, benefits, duties or obligations under this Agreement without the prior written consent of the Lessee, which consent shall not be unreasonably withheld.

11. START DATE.

For the purposes of this Agreement, the Start Date shall be the date of the grant to Lessor of the FCC authority to operate the ITFS Channels in accordance with the terms of this Agreement.

12. INDEMNIFICATION.

A) By Lessor. To the extent permitted by state and federal law and its charter or by-laws, Lessor shall forever protect, save and keep Lessee and its permitted successors and assigns harmless and indemnify Lessee against and from any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities of any kind or nature whatsoever, including reasonable attorney's fees, arising directly or indirectly out of (i) the willful misconduct of Lessor, its agents or employees in connections with the performance of this Agreement, or (ii) any programming transmitted by Lessor during any of Lessor's Airtime.

B) By Lessee. To the same extent Lessee is permitted by law to indemnify Lessor, Lessee shall forever protect, save and keep Lessor and its permitted successors and assigns harmless and indemnify Lessor against and from any and all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities of any kind or nature whatsoever, including reasonable attorney's fees, which arise directly and indirectly

out of (i) the negligence or willful misconduct of Lessee, its agents or employees, in connection with the performance of this Agreement; (ii) any programming transmitted by Lessee pursuant to this Agreement; (iii) any and all dealings by Lessee or any of its authorized agents or subcontractors with the public, third parties and subscribers to the Lessee's programming service; or (iv) any maintenance, installation or other work performed by Lessee or any authorized agent or subcontractor under this Agreement.

C) Notice of Claim; Defense of Claim. Each party shall notify the other of any such claim promptly upon receipt of same. Either party (hereinafter referred to as appropriate the "Indemnitor" or the "Indemnatee") shall have the option to defend, at its own expense, any claims arising under this Paragraph. If Indemnitor assumes the defense of any such claim, Indemnatee shall delegate complete and sole authority to the Indemnitor to defend or settle same and Indemnatee shall cooperate with Indemnitor in the defense thereof.

13. INSURANCE.

A) Policies Required. At its expense, Lessee shall secure and maintain with financially reputable insurers, one or more policies of insurance insuring the Leased Equipment and Lessee's utilization of the ITFS Channels against casualty and other losses of the kinds customarily insured against by firms of established reputations engaged in the same or similar line of business, of such types and in such amounts as are customarily

carried under similar circumstances by such firms, including, without limitation: (i) "All risk" property insurance covering the ITFS Equipment and the Common Equipment to the extent of one hundred percent (100%) of its full replacement value without deduction for depreciation: (ii) comprehensive general public liability insurance covering liability resulting from Lessee's operation of the ITFS Equipment on an occurrence basis having minimum limits of liability in an amount of not less than one million dollars (\$1,000,000.00) for bodily injury, personal injury or death to any person or persons in any one occurrence, and not less than two million dollars (\$2,000,000.00) in the aggregate for all such losses during each policy year, and not less than one million dollars (\$1,000,000.00) with respect to damage to property; (iii) all workers compensation, automobile liability and similar insurance required by law.

B) Insurance Policy Forms. All policies of insurance required by this Paragraph shall, where appropriate, designate Lessor as either the insured party or as a named additionally insured party, shall be written as primary policies, not contributory with and not in excess of any coverage which Lessor shall carry, and shall contain a provision that the issuer shall give to Lessor thirty (30) days prior written notice of any cancellation or lapse of such insurance or of any change in the coverage thereof.

C) Proof of Insurance. Executed copies of the policies of insurance required under this section or certificates thereof

shall be delivered to Lessor not later than ten (10) days prior to the Start Date. Lessee shall furnish Lessor evidence of renewal of each such policy not later than thirty (30) days prior to the expiration of the term thereof.

14. RELATIONSHIP OF PARTIES.

By the provisions of this Agreement, Lessor and Lessee intend to enter an airtime lease relationship and not a joint venture. They will carry out this Agreement to preserve that intent. Neither party shall represent itself as the other party, nor as having any relationship with one another, except as Lessor and Lessee under the terms of this Agreement.

15. EQUIPMENT PURCHASE

A) Lessor's Option to Purchase. In the event that this Agreement is terminated, Lessor shall have the option to purchase the Leased Equipment used exclusively for Lessor's ITFS license. Any equipment which is used in a shared fashion (such as transmit antenna, decoders, and combiners) in providing signals other than Lessor's signals are excluded from this option to purchase. The intent of the purchase option provided for in Paragraphs 15(A) is to provide Lessor with the capability to continue to perform on Lessor's ITFS license. The purchase price shall be the then book value (depreciated cost of assets) of such equipment noted above.

B) Lessee's Option to Purchase. If during the terms of this Agreement the FCC modifies its rules so as to enable Lessee to be licensed to operate the ITFS frequencies, Lessee shall have a right of first refusal to acquire such licenses subject to the

same terms and conditions as the right provided for in paragraph 1(C).

16. NON-DISCLOSURE.

Lessor acknowledges that there may be made available to it pursuant to this Agreement proprietary information of Lessee relating to the encoding and/or decoding system associated with the ITFS channel equipment and its patented processes including, but not limited to, improvements, innovations, adaption, inventions, results of experimentation, processes and methods, whether or not deemed patentable, and certain business and marketing techniques (all herein referred to as "Confidential Information"). Lessor acknowledges that this Confidential Information has been developed by Lessee at considerable effort and expense and represents special, unique and valuable proprietary assets of Lessee, the value of which may be destroyed by unauthorized dissemination. Accordingly, Lessor covenants and agrees that, except as may be required for the performance of this Agreement, neither it nor any of its agents or affiliates shall disclose such Confidential Information to any third person, firm, corporation or other entity for any reason whatsoever, such undertaking to be enforceable by injunctive or other equitable relief to prevent any violation or threatened violation thereof.

17. NON-COMPETITION. During the term of this Agreement, Lessor agrees not to transmit programming or to lease or sub-lease any channel capacity on its ITFS Facilities for the transmission of programming that is competitive with the program-

ming transmitted by Lessee. Lessor shall not, at any time during the term of this Agreement, become the licensee of any other ITFS facility within the Metropolitan Area.

18. FORCE MAJEURE.

If by reason of Force Majeure either party is unable in whole or in part to perform its obligations hereunder, the party shall not be deemed in violation of default during the period of such inability. As used herein, the phrase "Force Majeure", shall mean the following: act of God, acts of public enemies, orders of any branch of the government of the United States of America, any state or any political subdivisions, thereof which are not the result of a breach of this Agreement, orders of any military authority, insurrections, riots, epidemics, fires, civil disturbances, explosions, or any other cause or event not reasonably within the control of the adversely affected party.

19. CONDITION PRECEDENT.

This Agreement is conditional on the issuance of a Final Order by the FCC granting Lessor a construction permit for the ITFS Channels in the Metropolitan Area from the Transmission Site. By "Final Order" the parties mean an action or order of the FCC which is not reversed, stayed, enjoined, vacated, set aside, annulled or suspended and with respect to which no timely-filed request for administrative or judicial review is pending and as to which the time for filing any such request, or for the FCC to set aside the action on its own motion, has expired.

20. NOTICE.

Any notice required to be given to Lessor under any provision of this Agreement shall be delivered personally or by certified mail to Lessor at the address first written above. Any notice required to be given to Lessee under any provision of this Agreement shall be delivered personally or by certified mail to Lessee at the address first written above and to William D. Freedman, Esq., Gurman, Kurtis, Blask & Freedman, 1400 16th Street, N.W., Suite 500, Washington, D.C. 20036.

21. SEVERABILITY.

Should any court or agency determine that any provision of this Agreement is invalid, the remainder of the Agreement shall remain in effect.

22. WAIVER.

A waiver by either Lessor or Lessee of a breach of any provision of this Agreement shall not be deemed to constitute a waiver of any preceding or subsequent breach of the same provision or of any other provision.

23. PAYMENT OF EXPENSES. Except as otherwise provided, Lessee shall pay all costs and expenses incident to fulfilling this Agreement, including all marketing and receive site acquisition costs and attorneys fees; provided, however, that all such costs and expenses shall be approved by Lessee in advance.

24. VENUE AND GOVERNING LAW.

Venue for any cause of action brought by or between Lessor or Lessee relating to this Agreement, shall be in Providence

County, Rhode Island and all provisions of this Agreement shall be construed under the laws of the State of Rhode Island.

25. COUNTERPARTS.

This Agreement may be executed in one or more counterparts each of which shall be deemed an original, but all of which shall constitute one and the same instrument, and shall become effective when each of the parties hereto shall have delivered to it this Agreement duly executed by each of the other parties hereto.

26. ENTIRE AGREEMENT.

This Agreement constitutes the entire Agreement between the parties and supersedes all prior oral or written provisions of any kind. The parties further agree that this Agreement may only be modified by written Agreement signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at Colorado Springs this 31 day of May, 1991.

LESSOR: North American Catholic Educational Programming Foundation, Inc.

LESSEE: American Telecasting, Inc.

BY: [Signature]
John Primeau
President

BY: [Signature]
Brian E. Gast
CEO & President

Denver, CO
D Group
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

INSTRUCTIONAL TELEVISION

FIXED SERVICE

SERVICE AGREEMENT

SCHOOL DISTRICT NO. 1, CITY AND COUNTY OF DENVER

AND

AMERICAN TELECASTING OF DENVER, INC.

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APR 15 1994

ITFS SERVICE AGREEMENT

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

THIS ITFS CHANNEL LEASE SERVICE Agreement ("Service Agreement") is entered into this ____ day of _____, 1993, between Denver Public Schools, School District No. 1, City and County of Denver (DPS) having its principal place of business at 900 Grant Street, Denver, Colorado 80203 (hereinafter referred to either as "DPS", "Lessor" or "Carrier"), and American Telecasting of Denver, Inc., having its principal place of business at 4065 North Sinton Road, Suite 201, Colorado Springs, Colorado 80907 (hereinafter referred to either as "ATI" or "Lessee"). This agreement supersedes that certain agreement dated April 27, 1993 between DPS and TV Communications Network, Inc., which was assigned to ATI and which is hereby rescinded in its entirety and replaced by this Agreement.

WITNESSETH

WHEREAS, DPS is the licensee with the Federal Communications Commission (hereinafter referred to as the "FCC") for the license in the Instructional Television Fixed Service (hereinafter referred to as "ITFS") channels D-1, D-2, D-3, D-4, G-1, G-2, G-3 and G-4 (hereinafter referred to as the "Channels"), as designated by Subpart K of Part 21 of the FCC's Rules for the City and County of Denver and the immediately surrounding metropolitan area (hereinafter referred to as the "Market Area"); and

WHEREAS, ATI desires to lease the excess capacity on all the Channels from DPS and DPS is willing to lease such excess channel capacity to ATI for all lawful purposes consistent with the License, as the same may be amended from time to time;

NOW, THEREFORE, in consideration of the premises and of the exchange of the mutual promises, undertakings, covenants and conditions set forth herein, the parties hereto do hereby agree as follows:

1. DEFINITIONS: As used in this Agreement, the following terms shall have the meanings indicated:

(a) Channel Bandwidth. The width of the frequency band in Hertz that is allocated to that particular channel.

(b) "Commenced Construction" means the date that ATI delivers to DPS verification that sufficient equipment to complete all construction of the Transmission Facilities has been ordered with confirmed delivery dates of not more than (90) days from date of order.

(c) Instructional television fixed station (ITFS). A fixed station operated by an educational organization and used primarily for the transmission of visual and aural instructional, cultural, and other types of educational material to one or more fixed receiving locations.

(d) "License Date" means the date on which the FCC issues an authorized license upon completion and testing of the facility for the Channels for the market.

(e) Microwave Frequencies. This term refers to frequencies of 890 Mhz and above.

(f) Multichannel Multipoint Distribution Service (MMDS). Those multipoint distribution service channels that use the frequency band 2596 Mhz to 2686 Mhz and associated response

channels.

(g) Multipoint Distribution Service (MDS). A one-way domestic public radio service rendered on microwave frequencies from a fixed station transmitting (usually in an omnidirectional pattern) to multiple receiving facilities located at fixed points.

(h) Point-to-Point Microwave Radio Service. A domestic public radio service rendered on microwave frequencies by fixed stations between points which lie within the United States, or between points to its possessions or to points in Canada or Mexico.

(i) Service Agreement. Service Agreement shall include this ITFS Service Agreement.

(j) Subsidiary channel. A subsidiary channel is any portion of an authorized channel not used for main channel transmissions.

(k) Subsidiary Communications Service. Subsidiary communications services are those transmitted within the TV aural baseband signal, but do not include services which enhance the main program broadcast service or exclusively relate to station operation (see § 73.665(a), (b), and (c)). Subsidiary communications include, but are not limited to, services such as functional music, specialized foreign language programs, radio reading services, utility load management, market and financial data and news, paging and calling, traffic control signal switching, and point-to-point or multipoint messages.

(l) "Start Date". The start date shall be the date so designated in writing by DPS to ATI, after the channel tests are complete, and after the issuance of the pertinent license by the

FCC to DPS. The Transmission Fee shall commence and be payable on the start date.

(m) STL. Television STL Station (Studio Transmitter Link). A fixed station used for the transmission of television program material and related communications from a studio to the transmitter of a television broadcast station.

(n) Subscription Television. A system whereby subscription television programs are transmitted and received.

(o) "Transmission Equipment/Facilities" means the equipment and facilities owned by ATI and used by ATI for transmission of the Channels.

(p) "VBI" (Vertical Blanking Interval). This term refers to the first twenty-one (21) horizontal lines at the start of a TV picture, which are not visible. (525 horizontal lines constitutes a complete TV picture).

(q) Vertical Blanking Interval (VBI) Service. Telecommunications services permitted on the vertical blanking interval (VBI) service include the transmission of data, processed information, or any other communication in either a digital or analog mode, and shall include both the associated channels and vertical blanking interval subsidiary.

2. **CONDITION OF AGREEMENT.** This Agreement is conditioned on the FCC's order granting DPS's licenses for the four (4) D Group ITFS Channels and the four (4) G Group ITFS Channels in Denver, Colorado at ATI's transmission site at Eldorado Mountain becoming

a Final Order. By "Final Order" the parties mean an action or order of the FCC which is not reversed, stayed, enjoined, vacated, set aside, annulled or suspended and with respect to which no request for administrative or judicial review is pending and as to which the time for filing any such request, or for the FCC to set aside the action on its own motion, has expired. At such time, if any, as it may be established that no final order shall enter granting such licenses, then this agreement shall terminate.

3. USE OF THE CHANNELS.

(a) Air Time. DPS hereby promises to provide to ATI, during the term of this Service Agreement, all of the excess capacity air time on all bandwidths authorized by the FCC on all of the Channels within the scope of use specified in Paragraph 3(b).

(b) Use of Excess Capacity. Commencing on the Start Date, as the term is defined in this Agreement, DPS hereby permits ATI to use all Excess Capacity, as designated by DPS in accordance with paragraph 3(c) of this Agreement, on the Channels in the Denver, Colorado metropolitan area. ATI agrees to use Excess Capacity on the Channels to transmit pay television programming and other telecommunications services to subscribers. All ATI programming to be used on the Excess Capacity of the Channels will be included as part of the Company's Wireless Cable service to its customers, but at all times will face the ultimate approval of the Denver Public Schools prior to transmission. Attached to this ITFS Service Agreement (as Exhibit A) is a list of programming sources that the company is considering as part of ATI's expanded package

with the addition of the eight (8) DPS channels.

(c) Excess Capacity. "Excess Capacity" means transmission time, as designated by DPS, over the ITFS Channels (including their subcarriers and Vertical Blanking Intervals) which time is not used by or reserved for use by DPS. The definition of "Excess Capacity" as it relates to this agreement, also includes (but is not limited to) the 24-Hour, seven-days a week, every week of the year, usage of the Vertical Blanking intervals and the subcarriers of all eight (8) DPS ITFS channels. For each ITFS Channel, DPS shall designate Excess Capacity for each semester in writing, such designation to be delivered to ATI at least thirty (30) days prior to the first day of the month for which the designation is made. Any changes that might occur in said Excess Capacity designation during the semester will also be delivered to ATI by mail, by fax or by hand at least thirty days (30) prior to the implementation of such changes. Consistent with the rules and policies of the FCC, DPS shall designate at least 148 hours per week on each ITFS Channel as Excess Capacity and as many as 168 hours usage per channel (i.e. full time usage) if ATI is offering sufficient programming approved by DPS and qualified as educational, cultural, or vocational programming under the rules and regulations of the FCC. Examples of said programming sources that do qualify as educational programming are noted on Exhibit A to this Agreement. However, DPS may designate less than 148 hours per week per channel as excess capacity if necessary to enable it to transmit ITFS programming, provided ATI is given at least ninety

(90) days advance written notice and provided that the excess capacity available to ATI does not fall below 128 hours per week per channel. In the event Lessor intends to utilize more than forty (40) hours per week per channel, Lessee shall have the option of terminating this agreement upon six (6) months written notice to DPS. During week-ends, holidays, and whenever the schools are not in session or teachers are not required to report for work, all 168 hours shall be designated as Excess Capacity. In the event that DPS designates less than 148 hours per week per channel, the monthly royalty payments attributable to such channel shall be reduced proportionately. ATI's Excess Capacity use of the DPS channels will coincide with the Start Date or, as soon as practicable thereafter but in any case no later than issuance of the license by the FCC.

(d) Scope of Use. The Channels are provided to ATI hereunder for various purposes, including the transmission of programming to be provided by ATI, and/or by others of ATI's selection, from the Transmission Point to and throughout the Market Area to reception points selected by ATI. DPS shall have the exclusive right to approve all programming on the channels prior to transmission thereof, which approval shall not be unreasonably withheld. Should ATI so choose, the Channels may be operated utilizing bandwidth compression, if possible. The scope of use shall include vertical blanking intervals and the associated subcarrier and subsidiary channels. There shall be no prior approval restriction on the format or type of information or

signals to be transmitted on the blanking intervals and the associated subcarriers used by ATI unless otherwise prohibited by law or FCC regulation, provided that DPS shall be notified of the general substance of all information broadcast on the blanking intervals and related subcarriers and retains final right of approval of such information.

(e) Additional or Different Uses. The parties recognize that advances in technology and the development of new information networks may create opportunities for additional or different uses for the channels other than those now contemplated by this agreement. Should ATI wish to use any channel or part of any channel, including subsidiary channels, vertical blanking intervals, and subcarriers, for sale to any third party other than for educational programming or the sale of television programming, ATI shall notify DPS in writing of its intention, including the nature and scope of the proposed use. Following such notice the parties shall negotiate in good faith regarding the terms and conditions of such use, including, but not limited to, appropriate compensation. No channel or subchannel shall be used for any purpose other than educational programming and the sale of pay television programming as specified in this agreement until such time as the parties have agreed upon the terms and conditions of such new or additional use.

(f) Obligation to Transmit. ATI is obligated to provide transmission of sufficient educational programs to meet the FCC requirements of the DPS to retain the licenses of the eight ITFS

channels. ATI is also obligated to provide transmission of the programs created by the DPS, and other programs purchased by DPS. Subject to the parties' rights pursuant to other Paragraphs herein, nothing in this Service Agreement shall be construed to obligate or create a duty on the part of ATI to actually provide the maximum number of hours of programming possible during ATI's air time covered hereby, but the absence of programming shall not relieve ATI of its obligation to pay DPS the fees due hereunder.

(g) Preemption. The Channels provided to ATI hereunder are subject to preemption by DPS for reasons of national or local emergency or in accordance with any requirement or order of the FCC or any other local, state or federal regulatory authority with jurisdiction over operation of the Channels.

4. TERM.

(a) Initial Term. Subject to the provisions for earlier termination provided for herein, the initial term of this Service Agreement shall commence upon the date hereof and shall continue in full force and effect until five (5) years after the Start Date as defined herein. Said period is hereinafter referred to as the "Initial Term".

(b) Renewal Terms. At the end of the initial terms, ATI shall have the right to renew this agreement for two additional terms of five (5) years each upon notice, given in written form six (6) months prior to expiration of the initial term or first renewal term. Said period is hereinafter referred to as the "Original Renewal Terms". The terms and conditions of subsequent agreements,

if any, concerning use of the Channels following expiration of the original renewal terms shall be negotiated by the parties.

5. FACILITIES.

(a) Transmission Point. DPS's FCC license for the Channels specifies a particular transmission point (hereafter the "Licensed Transmission Point"). The "Licensed Transmission Point" is not capable of providing the necessary height for line-of-sight to the receive sites at all the schools. ATI intends to change such Transmission Point to Eldorado Mountain and, in such event, DPS agrees to file any necessary and permissible amendment to the Application pursuant to Section 21.23 of the FCC's Rules or any necessary and permissible modification application or notification with the FCC in accordance with Sections 21.40-42 of its Rules. In such event, ATI shall prepare all necessary FCC documents and shall reimburse DPS for DPS's reasonable and actual costs and expenses, including legal, accounting, engineering and attorney fees, actually incurred by DPS to prepare, file and prosecute such amendment, application, or notification. DPS and ATI agree, by signatures affixed hereto, that a co-location of the DPS ITFS transmission facility to ATI's Eldorado transmission site would be in the interests of both parties, the Denver Public School System, and the public-at-large. Any and all leases, licenses, permits, authorizations, engineering surveys, legal opinions or assistance, or approvals necessary to acquire the new DPS transmission site at Eldorado Mountain shall be obtained by ATI, in its own name and at its sole cost and expense. Immediately upon execution of this

agreement, ATI will begin ordering such equipment as may be required. ATI shall immediately commence installation upon delivery of the necessary equipment and shall thereafter complete installation in a timely manner. ATI shall, at its sole cost and expense install the transmitter equipment. The construction shall comply in all respects with the FCC's technical standards and DPS's authorizations reflecting technical changes agreed to by both parties prior to approving the Excess Capacity Use, and the transmission facilities shall be appropriate for their intended use so as to permit DPS to fulfill all ITFS transmission requirements of the FCC.

(b) STL Facilities. Upon the construction of a TV production studio by ATI, the studio facility will be made available for use to DPS at no charge. The time of usage shall be coordinated with ATI so as to avoid a conflict. ATI will permit DPS to use ATI's studio at the rate of four hours per day, five days per week, thirty-six weeks per calendar year. ATI will dedicate up to one-half of the permanent studio time usage to DPS during all times not utilized by ATI. This will be coordinated through, and by direct contact with, the facility Manager. If no such studio is constructed by ATI, then no later than November 30, 1994, ATI shall provide DPS with a studio transmitter link and shall pay to DPS up to a maximum of \$70,000.00 for construction by DPS of its own studio facility for use by DPS to broadcast over the channels as provided by this agreement.

(c) Transmission Facilities. The Parties have herein agreed to the Transmission Facilities which will be required to commence operation of DPS' ITFS Service, and agree to meet from time to time thereafter as mutually agreed to determine and decide any additions to the Transmission Facilities as may be appropriate. ATI, under the direction and control of DPS, shall be responsible for the design and timely construction of the Transmission Facilities in accordance with the Authorization and the terms of the Agreement. ATI shall bear all costs associated with such activities, including but not limited to all consultant, design, engineering, lease, repair personnel, site acquisition, utilities and insurance as well as legal fees associated with the construction, equipment, relocation and engineering of the facility. ATI shall notify DPS of the completion of construction of the Transmission facilities and the date on which the Transmission facilities became operational.

(d) Construction Schedule. Immediately upon execution of this agreement, ATI agrees to prepare an application for locating the transmission facilities at the Eldorado Mountain site. Upon approval of such application, ATI shall immediately commence construction of the transmission facilities in accordance with DPS's FCC conditional license. ATI shall complete construction within one hundred twenty (120) days of the FCC's approval of the modification application relocating the transmission site to Eldorado Mountain. Construction shall be completed in compliance with the conditional license and in such manner that a

certification letter of completion of construction shall be filed with the FCC upon completion of such construction.

(e) Transmitter Equipment. ATI shall select, purchase and install such transmitters and other equipment (hereinafter "Transmitter Equipment") as are required to operate the Channels in accordance with the provisions of DPS's FCC authorization and which meet all specifications and requirements of the FCC and any other government agency or body, subject to the approval of such equipment by DPS, which approval shall not be unreasonably withheld. All transmitter equipment used in the construction of the Transmission Facilities shall be owned by DPS and leased to ATI for the sum of One Dollar (\$1.00) per year for the entire Initial Term, all Renewal Terms thereof, and for all years thereafter so long as DPS and ATI remain in contractual relationships regarding the use of the channels. None of the Transmitter Equipment shall be altered, disconnected, rearranged, removed or replaced by ATI without DPS's prior written consent, except in the ordinary course of repair or maintenance of the equipment, at the termination or expiration of this Service Agreement, DPS will continue to own the Transmitter Equipment.

(f) Lease of Transmission Point. Within ten (10) days after the execution of this Service Agreement by DPS and ATI, ATI agrees to increase its lease of sufficient space at Eldorado Mountain for the installation and operation of the additional DPS transmitter equipment. ATI will exercise its best efforts to ensure that the site lease shall provide for the leasing of

sufficient space for the entire Initial Term and any renewals thereof and for full and equal rights of access by DPS and by ATI or by the authorized representatives of either.

(g) Power Increase. If ATI so requests, DPS will file an amendment to the Application or a modification with the FCC seeking authority to increase the output power of the Channels to a higher level requested by ATI, provided that such higher level is in accordance with the FCC regulations and will not cause or be reasonably anticipated to cause harmful electrical interference to any other radio transmission facility for which an application has previously been accepted by the FCC or authorization granted by the FCC, and which is entitled to protection from such interference under FCC rules and regulations. In the event that said authorization for power increase is obtained, ATI, at its sole expense, shall provide and install appropriate amplifiers and related equipment in order to effect said power increase and such amplifiers and equipment shall thereupon become part of the Transmission Equipment. ATI shall reimburse DPS for all reasonable costs, including legal, engineering and other expenses actually incurred by DPS and associated with said application and power increase.

(h) Governmental and Third Party Authorizations. DPS shall use its best efforts, and ATI shall cooperate with DPS, to obtain any and all FCC licenses, permits, authorizations of approvals required to carry out the transactions contemplated by this Service Agreement, provided, however, that the DPS shall not

be required to pay for the reallocation, reconstruction, or similar costs related to the waiver of the interference protection rights of co-channel or adjacent channel facilities in the Instructional Television Fixed Service ("ITFS"), as authorized under Part 74, Subpart I, of the FCC's rules. ATI shall use its best efforts and its good offices to assist DPS in obtaining necessary clearances from co-channel and adjacent channel ITFS operators as necessary. ATI shall use its best efforts to assist DPS to acquire, maintain and renew licenses for the Channels license, and ATI shall bear all the costs associated thereof, including reimbursing DPS for its reasonable expenses actually incurred in these procedures.

(i) Transfer of Title to Transmitter Equipment. Upon the execution of this Agreement and the installation of the transmitter and receive equipment, the transmitter and receive equipment shall, at DPS's option, be transferred to DPS by a bill of sale, and the transmitter equipment for the eight DPS ITFS channels and receive equipment shall become the property of DPS. In order to facilitate DPS's rights under this Section, ATI agrees to keep the transmitter equipment and receive equipment free and clear of all liens and encumbrances (including purchase money security interests) and shall promptly give DPS notice of the creation or assertion by any person or entity of any such lien or encumbrance.

(j) Lease of Transmitter Equipment to ATI. In the event DPS becomes the owner of the transmitter equipment, DPS shall lease the transmitter equipment to ATI for a term equal to the duration

of this Agreement, including the additional term(s), if applicable and for so long as DPS and ATI have contractual agreements for the use of these ITFS channels, for the sum of One Dollar (\$1), the receipt and sufficiency of which are hereby acknowledged by DPS.

(k) Operation, Maintenance and Repair. ATI shall manage, operate, maintain and repair the transmitter equipment, at its expense, in accordance with all applicable requirements of the FCC and this Agreement. Maintenance, operation and repair will be performed by technically qualified personnel under ATI's direct and continuing day-to-day supervision and in accordance with good engineering practices consistent with industry standards. Maintenance and repair shall include replacement of components where necessary. ATI will also train any engineering staff so designated by DPS in the operation and maintenance of the DPS ITFS facility, and ATI will also train school level engineering or maintenance staff personnel in trouble shooting in school technical problems. ATI will install a separate phone line dedicated for response to DPS and school level phone calls and distribute a list of pager numbers of ATI technicians for emergency repair usage.

(l) Control of Facilities. Notwithstanding anything in this Agreement to the contrary, DPS shall have ultimate control, in accordance with FCC rules and policies, of the construction, operation, management and maintenance of its respective portion of the transmission facilities.

6. OPERATION OF THE CHANNELS.

(a) Operation of the Transmission Equipment.

Notwithstanding anything in this Service Agreement to the contrary, DPS shall have ultimate control and general supervisory responsibility in accordance with FCC rules and policies, of the construction, operation, management and maintenance of its respective portion of the Transmission Facilities; provided, however, that any loss or damage caused by ATI's negligent or intentional failure to properly maintain its respective portion of the Transmission Facilities (including the losses, charges, and expenses associated with the meeting of radiation standards and claims with respect to RF radiation) shall be the sole responsibility of ATI. Without limiting the foregoing, DPS shall have the right: (1) to issue general written instructions covering the operation and maintenance of its respective portion of the Transmission Facilities; (2) to direct the day-to-day activities of ATI employees or agents (but only to the extent that they relate to the proper operation of its respective portion of the Transmission facilities under FCC rules and policies); (3) to inspect its respective portion of the Transmission Facilities at any time during operation; (4) to consult with the operating and maintenance records and procedures, and investigate operational complaints; and (5) to require ATI to provide written semi-annual reports on the operation of its respective portion of the Transmission Facilities, including a summary of information from the operating and maintenance records and a description of all complaints, breakdowns and repairs. ATI shall supply, at its sole cost an expense, personnel to operate and maintain the transmission equipment, which

shall at all times meet the technical operating requirements set forth in DPS's FCC license and the rules and regulations of the FCC. All operations and maintenance activities shall be maintained 24 hours every day. DPS and ATI shall cooperate to ensure that each of them is advised of any and all operational, maintenance and repair activities on equipment owned by DPS pursuant to this agreement. All repairs shall be completed as soon as reasonably possible. ATI shall not disconnect or remove any of the transmitter equipment without DPS's written consent, except as is necessary for troubleshooting, maintenance or repair. Both DPS and ATI shall have full and equal rights of access to the station facilities at all times for the purpose of FCC compliance. DPS shall not be liable for any costs or expenses arising as a result of ATI's work on the transmitters or equipment pursuant to this Paragraph.

(b) Operation of Additional Equipment. ATI, at its own expense, and with the prior written knowledge of DPS, may make alterations or install attachments to the Transmitters or Transmission Equipment (including, without limitation, encoding and/or addressing equipment selected by it) as may be required by the exigencies of its business from time-to-time, provided that: (1) such alterations and attachments do not violate any FCC rules or regulations; (2) FCC authorization, if required, has been obtained; (3) such changes are made subject to DPS's approval and under its supervision; and (4) such changes do not otherwise interfere with DPS's rights under this agreement. DPS shall use

its best efforts to obtain any required FCC authorization and ATI will reimburse DPS for its reasonable expenses actually incurred by DPS in obtaining same. Any equipment used in making such alterations or attachments shall be provided by ATI at its sole expense and shall thereupon become part of the Transmitters or Transmission Equipment. Subject to DPS's overall supervision, ATI shall be responsible for the operation, maintenance and repair of all equipment provided by it and shall pay all costs, including legal, engineering, equipment, construction, installation and other expenses associated with any alterations or attachments to the Transmission Equipment.

(c) Interference With Existing Operations. DPS and ATI will cooperate in the operation and maintenance of the Transmission Equipment as well as any alterations or attachments thereto, in such a fashion as to ensure that the Channels do not create or increase harmful interference with existing Multipoint Distribution Service ("MDS"), Operation Fixed Service ("OFS"), Instructional Television Fixed Service ("ITFS") facilities or any other applicants, permittees or licensees which are entitled to protection from such interference under the Rules of the FCC. Prior to commencing construction of any facilities to use frequencies in the ITFS band, DPS will obtain and file with the FCC all statements of consent and make all other necessary showings required by Section 22.901(d)(1) of the FCC's Rules and ATI will reimburse DPS for its reasonable expenses actually incurred by DPS in obtaining same.

(d) Reception Equipment. Beginning no later than April 1, 1994, and at a rate of up to thirty (30) sites per month, ATI agrees to install facilities to receive transmissions over the Channels at each of the one hundred sixteen (116) receive sites located at the DPS Schools in the Market Area, listed on Exhibit B, to be used for the education purposes of DPS and for monitoring the quality of such transmissions and compliance with the FCC's rules. Such facilities shall include such signal amplification as is necessary to enable reception within each classroom concurrently with Mile-Hi Cable signals received by DPS. The parties anticipate that some such receive sites are not within the line of sight of ATI's Eldorado Mountain transmission facilities and that additional equipment may be required to ensure proper reception at such sites. ATI shall install such equipment as is necessary to ensure proper reception at such facilities and shall do so no later than April 1, 1995, provided that ATI shall have no such obligation as to any site where the parties determine that reception cannot reasonably be provided because of topographic interference. For monitoring purposes, ATI will also install, at its sole expense and cost, reception equipment at 900 Grant Street (Denver Public Schools Administrative Building), 1089 Bannock (the Channel Six facility), and two other monitoring sites as chosen by DPS. Other than the foregoing, ATI has no responsibility hereunder to provide any other reception antennas, down converters, decoders, descramblers, related power supplies or any associated equipment ("Reception Equipment") required to display signals transmitted over the

Channels on a television set. ATI may, in its sole discretion and on terms and conditions of its choosing, install or cause to be installed such additional Reception Equipment for the ATI subscribers, provided and selected by ATI, as may be required, from time-to-time, in order for the general public, or any member thereof, to view the programs to be transmitted over the Channels. Title to all Reception Equipment provided by ATI hereunder, at the DPS receive sites noted above, shall vest in DPS or its designee. ATI shall be required to install any additional Reception Equipment only at particular locations selected by it or at other DPS receive sites only by mutual agreement of the parties.

(e) Program Origination and Delivery. ATI shall be solely responsible for the origination of all commercial programming to be transmitted over the Channels and any other use of the Channels and the delivery of such programming to the Transmission Point, including, but not limited to, the costs of point-to-point microwave channels and earth stations, if any, which it may require for such purpose. ATI shall bear all costs and expenses of purchasing, installing, operating and maintaining those facilities. Any personnel required to install, operate and maintain any commercial program origination and delivery facilities shall be provided by ATI, at its sole cost and expense, and such personnel shall be under ATI's exclusive control.

(f) Operating Expenses. ATI shall be solely responsible for and shall indemnify and hold DPS harmless from all commercial operating expenses. Said operating expenses shall include all

reasonable expenses incurred by DPS in providing service on ATI's behalf. Commercial operating expenses incurred by DPS shall be passed through each month on a dollar-for-dollar basis to ATI, and shall be immediately due and payable.

(g) Cooperation of DPS and ATI. DPS's use and operation of its Transmitter Equipment shall not interfere with ATI or cause damage to ATI's facilities or equipment. ATI shall use, operate and maintain its equipment and facilities (including any attachments installed to the Transmission Equipment) in such a way as not to interfere with DPS or cause damage to the Transmitter Equipment or the equipment at the facility.

(h) Control. DPS shall retain ultimate control over and responsibility for operation of the Channels and compliance with the FCC's rules.

7. CHANNEL LEASE SERVICE CHARGES.

(a) Commitment Fee. DPS hereby acknowledges receipt of the foregoing payments totalling \$50,000 from ATI's predecessor Lessor pursuant to ITFS Service Agreement superseded by this agreement. Such funds shall be immediately available for use by DPS. Such funds shall be credited toward ATI's obligation to pay monthly lease fee amounts under this agreement.

(b) Transmission Fee. Commencing on the Start Date and continuing thereafter for the Initial Term and Original Renewal Terms of the Service Agreement, ATI shall pay to DPS as

consideration for the Channels provided to ATI hereunder and the performance by DPS of its additional obligations hereunder, as follows:

During calendar year 1994, ATI shall make monthly payments equal to the greater of three thousand dollars (\$3,000.00) or thirty cents (\$.30) per subscriber.

Beginning January 1, 1995, and thereafter, such monthly payments shall equal the greater of four thousand dollars (\$4,000.00) or thirty cents (\$.30) per subscriber.

The first monthly payment will be due on the first of the month following the Start Date.

(c) Computation of Number of Subscribers. For purposes of this Service Agreement, the term "Subscribers" shall be deemed to mean the number of subscribers receiving the pay TV programming services of ATI as of the last day of the month in question, except that in the month in which service is terminated upon expiration of the Initial Term or a Renewal Term or pursuant to the termination provisions contained herein, the number of such subscribers shall be determined as of the date of termination. In those situations where programming is sold in bulk for viewing at isolated locations in the same facility (that is, where a number of viewing units are grouped for billing purposes such as may be the case with hotels, apartments and condominiums) and ATI's rates therefore are less than its prevailing monthly rate for the sale of ATI's programming to individual subscribers in the Market Area, the number of equivalent subscribers shall be determined by dividing the total

monthly revenues from said bulk billing by the then prevailing lowest basic monthly rate for similar wireless cable services to individual subscribers in the market area and the number of equivalent subscribers so calculated added to the subscriber count in lieu of the actual number of subscribers in those situations.

(d) Required Certificate, Invoice and Payment Procedures. ATI shall, within thirty (30) days of the end of each month after the Start Date, provide DPS with a Certificate signed by the general manager of ATI showing the amount of Gross Monthly Revenues for the preceding month and a computation of number of subscribers. The Transmission Fee payable by ATI to DPS, shall be computed on the Certificate, and ATI shall forward said Transmission Fee to DPS at the time of tendering the Certificate. ATI shall include on the Certificate any other information reasonably requested by DPS, so that DPS may accurately determine that the Transmission Fee tendered by ATI has been calculated correctly. Any other charges to be paid by ATI hereunder shall be invoiced to ATI on a monthly basis by DPS. Said invoices shall contain an itemization of the charges contained therein, and all such charges reimbursable hereunder shall be paid by ATI within fifteen (15) days after the date of its receipt thereof.

(e) Late Charges. Monthly Transmission Fees are due and payable on the 15th of the month following the calculated month. A late fee of 5% of the amount due will be assessed if the Transmission Fee is not received by the 1st of the month following the due month. At that point, until paid, a 1.5% per month finance

charge from the due date will be assessed in addition to the late fee. For example, the monthly fee for the month of May is due June 15th, a late fee of 5% would be assessed on July 1st and finance charges of 1.5% per month would start to accrue from June 15 if not paid prior to July 1st.

(f) Right to Audit. ATI and DPS shall, while this Service Agreement is in force, keep, maintain and preserve complete and accurate records and accounts, including all invoices, correspondence, ledgers, financial and other records pertaining to ATI's and DPS's charges hereunder, and such records and accounts shall be available for inspection and audit at the respective offices of ATI and DPS at any time or times during the time service is being provided to ATI hereunder, during reasonable business hours, by ATI or DPS or their respective nominees. DPS shall be entitled to audit ATI's records and accounts. From time to time and upon reasonable notice to ATI, DPS or its accountants or attorneys shall the right to request information or be permitted at all reasonable times to inspect and copy all records of ATI which DPS or its accountants or attorneys reasonably consider necessary to verify ATI's compliance with the terms and provision of this Agreement. It is understood by DPS that such information is to be held in confidence and not disclosed to any third parties without prior consent of ATI. ATI shall provide to DPS a subscriber report prepared within ninety (90) days following the end of each business year. The report would include a calculation of the fees owed on the subscribers under this agreement and compared with actual

payments made. Any shortage or excess would then be paid by ATI or DPS within 30 days of the report. If as the result of an audit, there is discovered underpayment of greater than five percent (5%) of any of the charges provided herein, the party which has suffered from the underpayment shall be entitled to reimbursement of its reasonable costs of said audit. ATI shall not interfere with DPS's exercise of its respective right of inspection and audit set forth herein. The exercise in whole or in part at any time or times of the right to audit records or accounts, or of any rights herein granted, or the acceptance by DPS of any statement or remittance tendered by or on behalf of ATI shall be without prejudice to any of its rights or remedies and shall not preclude DPS thereafter from disputing the accuracy of any such statement or payment. In the event that ATI or DPS disputes the amount of Gross Monthly Revenues determined by DPS in any audit hereunder, such dispute as to the amount of such Revenues shall first be attempted to be resolved by mutual discussion and negotiation. All information obtained by DPS during any audit shall be maintained on a confidential basis.

(g) Subscriber Contracts. ATI will from time to time enter into contracts with individuals in the market area for receipt of ATI's services and video subscription services (hereinafter referred to as "Subscribers"). DPS shall not interfere with the right to ATI or its designee to lawfully modify, waive, rescind, terminate, in whole or in part, or cancel any and all services or contracts with Subscribers. In case any such

services or contracts are rescinded, terminated or cancelled, DPS shall not be entitled to any participation in revenues or claims whatsoever with respect to the unperformed and unpaid portion of any such contract, provided, however, that DPS shall be entitled to payment for services rendered by ATI to a Subscriber for all or a portion of any month for which payment has been made by the Subscribers to ATI.

(h) Proration of Fees. In the event that: (1) the Start Date shall be a date other than the first day of a calendar month; or (2) this Service Agreement shall be terminated or expire on a date other than the last day of a calendar month and it is determined that such termination or expiration shall have occurred in a manner not affecting DPS's right to payments hereunder, the Transmission Fee due DPS in such month shall be pro rated.

8. CONDITIONS SUBSEQUENT. Except for the provisions hereof that relate to the rights and obligations of ATI and DPS which come into existence prior to the Start Date, all of the rights and obligations governing service on the Channels hereunder shall be subject to the following conditions subsequent, which conditions may be waived in writing by the non-defaulting party.

(a) FCC Action. ATI and DPS will cooperate, in a timely and diligent manner, to take all necessary and appropriate steps to secure from the FCC and to maintain and have renewed all authorizations required for DPS to provide the services to ATI as specified herein and will timely provide all necessary information and filings with the FCC, arranging for all necessary engineering

studies, obtaining all necessary government approvals and fulfilling all other usual and customary requirements associated with obtaining and maintaining such authorizations. DPS shall provide service on the Channels to ATI in accordance with the scope and intent of this Service Agreement. At no time will either party act in such a manner which has, or could potentially have, an adverse effect upon the status of DPS's Application and/or the ability or qualifications of DPS to hold or continue to hold the FCC authorizations for the Channels.

(b) Constructions. The Channels shall be constructed and shall be operational in accordance with the terms hereof.

(c) Laws and Rules. DPS's obligations hereunder are conditioned on ATI using the Channels in accordance with all applicable laws, FCC authorizations, FCC rules and regulations, and compliance by ATI with the terms of this Service Agreement. ATI's obligations hereunder are conditioned on DPS operating the Channels in accordance with all applicable laws, FCC authorizations and FCC rules and regulations and compliance by DPS with the terms of this Service Agreement.

9. AUTHORIZATIONS AND LICENSES, FURTHER EFFORTS.

(a) Modification of Authorization. Throughout the Initial Term and any Renewal Terms, ATI and DPS shall cooperate and use their best efforts to obtain and maintain in force all conditional licenses, licenses and authorizations required in connection with ATI's use of the Channels. Where requested to do so by ATI, DPS shall apply for, and use its best efforts to obtain,

those extensions of and/or reasonable modifications in its conditional licenses, licenses and authorizations, including, but not limited to, change(s) in the Transmission Point, which would help ATI in its business and to provide all necessary information and filings to the FCC, arrange all necessary engineering studies, obtain all governmental authorizations and fulfill all other usual and customary requirements associated with obtaining and maintaining such authorizations, and ATI will reimburse DPS for its reasonable expenses actually incurred by DPS in obtaining same. ATI shall prepare all documents to be filed with the FCC with the FCC and the DPS shall have the final approval of all documents before they are executed and filed with the FCC.

10. SPECIFICATIONS.

(a) Technical Specifications. Except as otherwise provided herein, the Channels shall at all times transmit signals which conform to the technical specifications and other relevant provisions of the FCC authorizations and the FCC's rules and regulations.

(b) Technical Exceptions. ATI-provided equipment and communications systems may be connected to the Transmission Equipment where such connection is made in accordance with the provisions hereof. Notwithstanding anything herein to the contrary, DPS shall not be responsible for: (1) the quality of signals generated as a result of equipment provided by ATI and connected to the Transmission Equipment or for defects caused by

such ATI-provided equipment and communications system; or (2) the reception at the Transmission Point of signals generated by equipment provided by ATI.

11. LIMITATION OF LIABILITY.

(a) In General. Without limitation, DPS will be without liability whatsoever for the following: (1) damage arising out of mistakes, omissions, interruptions, delays, errors or defects in transmissions caused by any act or omission of ATI or its employees, contractors or agents; (2) for failure in any way related to any equipment installed by ATI; (3) for failure caused by acts of God, sabotage, vandalism, or negligence or acts or omissions of any third party; or (4) for failure in any way related to the reception of programming at the Transmission Point. Moreover, DPS shall not be responsible for: (5) the quality of the signal delivered to it by ATI; (6) any degradations or outages in the delivery of ATI's signal to the Transmission Point which are the result of, or attributable to, the failure of transmission lines or equipment provided by, maintained by, or under the control of, ATI or any third party under agreement with ATI; (7) any outage which occurs at any reception point resulting from a failure of reception equipment or a distribution system at that reception point; or (8) any outage which is caused by a failure of Point-to-Point Channels, not under the control of DPS, which are used to deliver signals to the Transmitter Point.

(b) Damage to Premises. DPS shall not be liable for any

defacement of or damage to any premises resulting from the installation or removal of Transmitter Equipment, Reception Equipment or any other equipment from such premises by ATI.

(c) Risk of Loss. DPS shall have no responsibility for any loss or damage to the Transmission Equipment unless such loss or damage is caused by it or its employees or agents.

(d) Indemnification. ATI shall indemnify, defend and hold the DPS harmless from any and all claims, damages, causes of action, judgments, penalties, statutory damages, interest, attorneys fees and costs and expenses, including attorney's fees and liabilities of any kind or nature whatsoever, arising directly or indirectly out of the acts, omissions, negligence or willful misconduct of ATI, its employees or agents in connection with the performance of this Agreement. Moreover, ATI shall forever protect, save, and defend, and keep DPS and its owners, employees and agents harmless and indemnify them from claims, damages, causes of action, judgments, penalties, statutory damages, interest, attorneys fees and costs and expenses, and liabilities, including attorney's fees, resulting from claims of libel, slander, the infringement of copyright, or the unauthorized use of any trademark, trade name, or service mark, or claim that the content of any program transmitted over the Channels violates any pornography, obscenity laws, or infringes privacy rights, or any other claimed harm or unlawfulness arising from the transmission of any programming; and against claims for infringement of patents arising from ATI's use of the Transmission or Transmitter

Equipment. This indemnification shall include providing a defense on behalf of DPS, preserving DPS's right to select counsel, and to have all reasonable attorney's fees and reasonable costs, taxable and nontaxable to be paid by ATI. Where such indemnification is sought by DPS (the "Claiming Party"): (a) it shall notify in writing the other party (ATI) promptly of any claim or litigation or threatened claim to which the indemnifications relates; (b) upon ATI's written acknowledgment of its obligation to indemnify in such instance, in form and substance satisfactory to the Claiming party, the Claiming Party shall afford ATI the opportunity to participate in and, at the option of ATI, control, compromise, settle, defend or resolve such claim or litigation.

(e) Insurance. Commencing on the Start Date, ATI shall maintain a commercial general liability insurance policy with \$1 million dollars per occurrence and general annual aggregate limit and \$1 million dollars of products - completed operations aggregate limit, to cover its obligations as set forth in this Service Agreement. Upon request, ATI shall furnish DPS with insurance certificates evidencing such current insurance policies, which name DPS as a third party insured thereunder.

12. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF ATI. ATI represents and warrants as follows:

(a) Organization. ATI warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of Colorado. ATI is qualified or otherwise entitled to do business in all jurisdictions in which such

qualification or entitlement is required by reason of its business, activities, or ownership of property. ATI has all requisite power and authority to own, operate and lease its properties and to carry on its business and enter into this agreement and perform its obligations herein.

(b) Authorization. All necessary actions on the part of ATI to authorize the execution and delivery of this Agreement, and the performance of the obligations of ATI herein, have been taken.

(c) No Violations. The execution, delivery and performance of this Agreement and all actions and transactions contemplated hereby: (1) will not violate any provision of law or of the Articles of Incorporation or Bylaws of ATI, any order of any court or other agency of government to which ATI is party or by which it or any of its properties is bound, and (2) will not violate, be in conflict with, result in a breach of or constitute (with notice or lapse of time or both) a default under any applicable law, order or regulation, indenture, agreement or other instrument to which ATI is a party or by which it or any of its properties is bound and which has not been waived or consented to, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its property or assets.

(d) Reliance. DPS would not enter into this Agreement but for its reliance upon the foregoing representations and warranties of the ATI. No consent, approval or authorization of, designation, declaration or filing with any person is required in

connection with the execution, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby.

13. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF DPS. DPS represents and warrants as follows:

(a) Authorization. DPS has all requisite power and authority to enter into this Agreement and to perform the obligations to be performed by it under this Agreement. This Agreement constitutes a valid, binding and enforceable obligation of the DPS.

(b) No Violation. The execution and delivery of this Agreement by DPS and the performance of DPS's obligations hereunder are not in violation or breach of, do not conflict with or constitute a default under, and will not accelerate or permit the acceleration of the performance required by, any of the terms and provisions of any note, debt instrument, security agreement or mortgage or any other contract or agreement, written or oral to which DPS is a party or by which any assets or properties are bound, and will not be an event which, after notice of lapse of time or both, will result in any such violation, breach, conflict, default, or acceleration or under any law, judgment, decree, order, rule or regulation of any governmental authority or applicable to DPS and will not result in the creation or imposition of any lien (whether or not perfected), encumbrance, equity or restriction in favor of any third person upon any of the properties of DPS: Provided, however, that the DPS shall not be in default of this provision if

the FCC determines that any provision of the Agreement, or the Agreement as a whole, violates FCC rules or policies or the Communications Act of 1934, as amended. In such event, the Parties shall negotiate in good faith such changes to the Agreement so as to effect compliance with FCC requirements.

(c) Reliance. ATI would not enter into this Agreement but for the reliance upon the foregoing representations and warranties of the DPS.

14. TERMINATION. The termination rights of the parties shall be as set forth below:

(a) Termination for Interference. If, following the Start Date, technical interference should occur on the Channels which is beyond the control of ATI or DPS and if, following sixty (60) days' written notice to DPS of such interference and the best efforts of DPS and ATI to reduce or remove such interference, such interference shall render the use of such channels unusable for the business purposes provided for herein, ATI may terminate this Service Agreement, provided, however, that ATI shall first give written notice to DPS of its intent to terminate said agreement and provide therein complete information concerning the origin, nature and duration of such interference.

(b) Termination of FCC Authorization. This Agreement shall be terminated in the event that DPS's authority to operate the Channels in accordance with the terms of this Agreement is permanently terminated by the FCC or other governmental authority (FCC termination date). If termination shall occur pursuant to

this paragraph, such termination shall extinguish and cancel this Agreement and its future effect absolutely without further liability on the part of either party to the other; except that ATI shall remain obligated to pay all accrued monthly recurring fees and other payments required by this Agreement through the FCC termination date.

(c) Termination by Reason of Default or Nonperformance.

At the option of the non-defaulting party and subject to other provisions herein, this Agreement may be terminated upon a material breach or default by the other party of its duties and obligations hereunder. DPS may declare default upon occurrence of any of the following:

(1) ATI fails to make any payment due and payable under this Agreement within thirty (30) days after the date upon which a payment is due hereunder; or

(2) If any of the material Representations or Warranties of ATI prove at any time to be incorrect; or

(3) ATI materially breaches any covenant or agreement herein or fails to comply with any material provision of this Agreement; or

(4) ATI files a petition in bankruptcy, either voluntary or involuntary, under any federal or state insolvency law, or any answer consenting to or acquiescing in any such petition is not vacated or set aside within sixty (60) days of its filing; or the making of an assignment for the benefit of creditors; or the inability to pay debts when they become due; or

(5) The liquidation of ATI; or

(6) ATI's failure to timely construct the Facility as specified in section 5 herein.

(7) Failure by ATI to commence transmissions of ITFS programming as required by FCC Rules, or ATI's failure at any time thereafter to transmit such programming for ninety (90) consecutive days.

(d) DPS's Rights in Event of Default. In the Event of Default, or material breach by ATI, and in addition to all other remedies available to DPS in law or equity, DPS shall be entitled to terminate this Agreement, if such breach or default shall continue for a period of thirty (30) consecutive days after notice thereof shall have been sent by DPS to ATI. Since the FCC requires the holder of the ITFS license to maintain certain hours of broadcasting on the channels to maintain the FCC license, the DPS may be required to repossess the Channels and broadcast on them to meet this requirement. In addition, whenever DPS has the right to terminate this Agreement, DPS shall also have the right and option to repossess the Channels and to enforce the terms of the Agreement through the remaining period of the five year term in which the default occurs. In the event DPS elects to enforce the remaining period of the five year term, ATI shall remain 100% liable for all amounts due under this Agreement and all other obligations hereunder. If DPS elects to exercise its right to repossess the leased Channels, DPS shall also have the right to lease the Channels to a third party and/or itself. In the event the Channels

are leased to a third party, the terms shall be reasonable under the circumstances existing at the time of re-leasing. In the event DPS elects to broadcast on the channels, it shall credit ATI an amount equal to the then highest offer received from a third party, or if no such offer is solicited by DPS, then ATI shall be credited a commercially reasonable amount, in no event to exceed payments due under this agreement. All such lease amounts shall be credited to the amounts owed by ATI for the remaining period of the five year term. In the event of either repossession or termination by either party, the lease for the Transmitter Equipment between DPS and ATI shall remain in full force and effect and ATI shall take no action which shall interfere in any manner with DPS's continued operation of the Transmitter Equipment or business arrangements which DPS may have entered for use of the Transmitter Equipment. Such termination shall not affect or diminish the rights, claims or remedies available in equity or at law to the non-defaulting party arising by reason of such breach or default.

15. MISCELLANEOUS.

(a) Force Majeure. If by reason of force majeure either Party is unable in whole or in part to carry out its obligations hereunder, said party shall not be deemed in violation or default, during the reasonable continuance of such inability. The term "Force Majeure", as used herein, shall mean the following: acts of God, acts of public enemies; orders of any kind of the government of the United States of America or of the state government where the Facilities are located, or any of their departments, agencies,

political subdivision, or officials, or any civil or military authority, which orders are not the result of an act or omission of ATI; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms of extraordinary force; floods; washouts; droughts; civil disturbances; explosions; or any other cause or event not reasonably within the control of the adversely affected party.

(b) Assignment of Interests.

(1) DPS may assign, trade, sell, dispose or otherwise alienate or encumber its rights or interests under this Service Agreement regardless of whether or not the assignment is to a wholly-owned subsidiary or affiliate, and without the written consent of ATI.

(2) With DPS' approval, which may not unreasonably be withheld, ATI may assign any or all of its rights and/or interests under this Service Agreement by giving thirty (30) days written notice to DPS, and DPS shall object, if at all, in writing within twenty (20) days of receipt of each proposal. DPS's consent in writing may be obtained. If, however, no written objection has been received in hand at the end of thirty (30) days after the last proposed assignment has been given to DPS, then the assignment may proceed. DPS cannot unreasonably object to ATI's assignment of rights. In event of an assignment, ATI shall remain liable to DPS for ATI's obligation under this agreement for the remaining period of the term during which the assignment occurs.

(3) ATI may assign its rights, obligations and

interest in this Service Agreement to one or more banks in connection with financing agreements with such bank(s), provided that no such assignment shall in any way diminish DPS' rights under this Service Agreement as to ATI or any assignee, specifically including, but not limited to DPS' right to approve programming and DPS' right to own the equipment identified in paragraph 5(i) free and clear of any encumbrance.

(c) Notice. Any written notice required to be given by any party to any other party to this Service Agreement shall be deemed to have been sufficiently given if sent by prepaid overnight express courier and addressed to DPS or to ATI, as the case may be, at their respective addresses set forth in the preamble hereto, or, if different, at the last-known principal business address of each such party.

(d) Entire Service Agreement. This Service Agreement states the entire agreement as of this date between the parties with respect to the subject matter hereof and supersedes all pre-existing oral or written agreements or commitments with respect thereto. This Service Agreement may be modified only by an agreement in writing executed by all of the parties hereto. This Service Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, subject, however, to the provisions of assignment restriction as set forth herein.

(e) Survival of Representations. All representations, warranties, covenants, and agreements made by the parties hereto or

in any certificate to be delivered hereunder or made in writing in connection with the transactions contemplated herein shall survive the execution and delivery hereof and/or thereof, as appropriate.

(f) Payment of Expenses. Except as otherwise provided herein, the parties shall pay their own expenses incident to the preparation and carrying out of this agreement, including all fees and expenses of their respective counsel.

(g) Severability of Provisions. If any provision hereof is held invalid, the remainder of this agreement shall not be affected thereby.

(h) Further Action. From time to time, after the date of execution thereof, the parties shall take such further action and execute such further documents, assurances and certificates as either party may reasonably request of the other in order to effectuate the purpose hereof. In addition, each party agrees that it will not take any action which would adversely affect the rights granted by it to the other party hereunder.

(i) Counterparts. This Service Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and shall become effective when each of the parties hereto shall have had delivered to it this Service Agreement duly executed by the other party hereto.

(j) Headings. The headings herein are inserted for convenience only and shall not constitute a part hereof.

(k) Dealings with Third Parties. No party is, nor shall

any party hold itself out to be, vested with any power or right to contractually bind, or act on behalf of any other as its contracting broker, agent or otherwise for committing, selling, conveying or transferring any of the other party's assets or property, contracting for or in the name of the other party, or making any contractually binding representations as to the other party which shall be deemed representations contractually binding such party. In particular, ATI shall not be identified as the FCC licensee or permittee of the Channels.

(1) Independent Relationships. Nothing in this contract shall be construed as creating an employer-employee relationship by and between DPS and ATI, and DPS shall not be held responsible for the acts or omissions of ATI, its employees, or agents.

(2) No Third Party Beneficiaries. It is not the intent of either DPS or ATI that there be any third party beneficiary to this contract, and this contract is exclusively for the benefit of ATI or DPS or their respective assigns.

(1) Governing Law. This Service Agreement shall be governed by, and construed and enforced in accordance with, the Communications Act of 1934, as amended, the rules and policies of the FCC and the laws of the State of Colorado.

(m) FCC Rules. Anything contained herein to the contrary notwithstanding, nothing herein shall in any way limit the rights and remedies of DPS or ATI under FCC rules and regulations.

(n) License and Equipment. Nothing contained herein

shall be construed as granting to ATI any rights in or to DPS's FCC authorizations or licenses.

(o) Time of Essence. Whenever this Service Agreement shall set forth any time for the performance of an act, such time shall be deemed of the essence.

(p) Benefit. This Service Agreement shall inure to the benefit of an shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and, to the extent permissible hereunder, assigns. Nothing in this Service Agreement, expressed or implied, is intended to or shall: (1) confer on any person other than the parties hereto or their respective heirs, legal representatives, successors, or assigns, any rights, remedies, obligations or liabilities under or by reason of this Service Agreement; or (2) constitute a partnership or joint venture between the parties hereto.

(q) Word Meanings. As used in this Service Agreement, the term "including" shall be deemed to mean including without limitation. All pronouns and any variation therefore shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require.

(r) Reformation. If the FCC should (1) change its rules or policies in a manner that would affect the enforceability of this Service Agreement, (2) directly or indirectly reject or take action to challenge the enforceability of this Service Agreement, or (3) take any steps whatsoever, on its own initiative or by petition from another person, to challenge or deny the authority

heretofore granted by the FCC with regard to the Channels, then the parties hereto shall promptly negotiate in good faith to reform and amend this agreement to the extent possible to preserve the intent and objectives of the parties in making this agreement.

(s) Attorney's Fees. If it shall be necessary for either DPS or ATI to employ an attorney to enforce their respective rights pursuant to this Agreement because of the Default of the other Party, the losing Party shall reimburse the prevailing Party for reasonable attorney's fees.

16. TARIFF AND DPS STATUS.

(a) If required by the rules and policies of the FCC, DPS hereby agrees to file and maintain a tariff with the FCC which is in no way inconsistent with the terms and conditions of this agreement. If the FCC requires that a tariff be filed, ATI shall assist DPS in the preparation, filing and maintenance of such tariff.

(b) In the event that DPS is at any time not subject to tariff regulation, this agreement shall remain in full force and effect and shall govern the service herein contemplated.

IN WITNESS WHEREOF, the parties, by their duly authorized signatory, have executed this ITFS Service Agreement on the date and year written below.

DENVER PUBLIC SCHOOLS, SCHOOL DISTRICT NO. 1

By: Thomas R. Mauro Date: 3/3/94

Title: Tom Mauro, President
Board of Education

AMERICAN TELECASTING OF DENVER, INC.

By: 

Title: Brian Gast, President

Date:

3-9-94

Denver, CO

E Group

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WLK321

*Licensed to Sprint Subsidiary
– American Telecasting of
Denver, Inc.*

Denver, CO
F Group
-
KNSE324



KNSE324
(DENVER, CO)

401 9th Street, NW
Suite 400
Washington, DC 20004

February 3, 2005

VIA HAND DELIVERY

Federal Communications Commission
Wireless Bureau Applications
c/o Mellon Bank
P.O. Box 358130
Pittsburgh, PA 15251-5130

Re: Application to Partition Basic Trading Area B110 (Denver, CO) and Assignment of Broadband Radio Service Station Authorizations KNSC838, KNSC839, KNSC840, KNSE325, KNSE326, KNSE327 (Ponderosa Park, CO) and KNSE324 (Denver, CO), and Broadband Radio Service Response Station Hub Authorizations KNSC838H01 and KNSC840H01 (Ponderosa Park, CO) from Digital and Wireless Television, LLC (FCC Registration No. 0001638261) to American Telecasting of Denver, Inc. (FCC Registration No. 0004357141)

Dear Sir or Madam:

Enclosed, please find an original and two copies of an assignment application on FCC Form 305 requesting Commission consent to the partitioning of Basic Trading Area B110 (Denver, CO) and the assignment of Broadband Radio Service ("BRS") station authorizations KNSC838, KNSC839, KNSC840, KNSE325, KNSE326, KNSE327 (Ponderosa Park, CO) and KNSE324 (Denver, CO), and BRS Response Station Hub authorizations KNSC838H01 and KNSC840H01 (Ponderosa Park, CO) from Digital and Wireless Television, LLC to American Telecasting of Denver, Inc., a wholly-owned subsidiary of Sprint Corporation.

Also included is a completed FCC Form 159 with credit card authorization to cover the requisite \$580.00 filing fee for this request.

Should there be any questions regarding this application for consent to assignment, please contact Deanna Larsen at 202-585-1961.

Respectfully submitted,

Luisa L. Lancetti
Vice President, Wireless Regulatory Affairs

Attachment

**FCC Wireless Telecommunications Bureau
Application for Consent to Assignment
of Multipoint Distribution Service Authorization**

Approved by OMB
3060 - 0851
See Instructions for
public burden estimate

SECTION I - GENERAL AND FEE INFORMATION

1. Applicant Name (Last, First Middle Initial) Digital and Wireless Television, LLC		FCC Registration Number (FRN) 0001638261	
Mailing Street Address Or P. O. Box 600 Travis, Suite 6800 Attention: Dee S. Osborne		Internet Address dso@crestinv.com	
City Houston	State Or Country (if foreign address) TX	Zip Code 77002	
Telephone Number (include area code) 713-222-9936	Call Sign See Exhibit 1	Other FCC Identifier (If applicable) See Exhibit 1	
2. Is a fee submitted with this application? <div style="text-align: right;"><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</div> If YES, complete and attach FCC Form 159. If NO, indicate reason for fee exemption (see 47 C.F.R. § 1.1114). <div style="display: flex; justify-content: space-between;"><input type="checkbox"/> Governmental Entity<input type="checkbox"/> Noncommercial Educational License<input type="checkbox"/> Other (please explain):</div>			

SECTION II - TO BE COMPLETED BY ASSIGNOR

1. Name of Assignor Digital and Wireless Television, LLC		FCC Registration Number (FRN) 0001638261	
Mailing Street Address or P. O. Box 600 Travis, Suite 6800	City Houston	State TX	Zip Code 77002

2. Provide the following information for each license authorized to or Basic Trading Area ("BTA") authorization held by the assignor for which assignment is sought in this application.

CALL SIGN/BTA NUMBER	LOCATION(CITY/STATE)	FILE NUMBER	EXPIRATION DATE
See Exhibit 1 for list of call signs and	description of BTA to be partitioned.		

3. Does the assignor seek assignment of its authorization for a Basic Trading Area ("BTA") or a Partitioned Service Area ("PSA") which was received in the past three years through a competitive bidding process?

☐ YES ☒ NO

If YES, attach as an Exhibit the associated contracts for sale, option agreements, management agreements or other documents disclosing the total consideration that the assignor will receive in return for assignment of its authorization.

Exhibit No.

SECTION II -- (continued)

4. Does the assignor seek assignment of a conditional license prior to the completion of construction of the facility and the timely filing of the certificate of completion of construction?

☒ YES ☐ NO

If YES, attach as an Exhibit:

Exhibit No.
2

- (a) the following information for each of the Incomplete or Unconstructed facilities listed in Item 2:
 (i) call sign;
 (ii) file number;
 (iii) date by which construction must be completed; and
 (iv) whether the facilities were authorized following a comparative hearing or pursuant to the random selection proceeding in which the successful applicant received a preference, and whether the facilities have been operated for less than one year; and
- (b) the detailed showing and declarations of the applicants required by 47 C.F.R. § 21.39 which demonstrate that the proposed assignor has not acquired the authorization or operated the station for the principal purpose of profitable sale rather than public service.

5. Are there any agreements, oral or written, involving use and/or control of the station?

☒ YES ☐ NO

If YES, attach as an Exhibit a copy of any such agreement(s). If there is only an oral agreement, reduce the terms to writing and attach.

Exhibit No.
3

6. Attach as an Exhibit a copy of the contract or agreement to assign the property and facilities of the station. If there is only an oral agreement, reduce the terms to writing and attach.

Exhibit No.
4

CERTIFICATION

7. By checking YES, the applicant certifies that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits that includes FCC benefits pursuant to § 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, or, that in the case of a non-individual applicant (e.g., corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits that includes FCC benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. § 1.2002(b). Failure to check YES may cause dismissal of your application.


☒ YES ☐ NO

The ASSIGNOR acknowledges that all the statements made in this application and the attached Exhibits are considered material representations, and that all Exhibits are a material part hereof and incorporated herein.

The ASSIGNOR represents that this application is not filed for the purpose of impeding, obstructing or delaying determination on any other application with which it may be in conflict.

In accordance with 47 C.F.R. § 1.65, the ASSIGNOR has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in information furnished.

I certify that the ASSIGNOR'S statements in this application are true, complete and accurate to the best of my knowledge and belief, and are made in good faith.

Type or Print Name of Person Signing Dee S. Osborne	Signature 
Title of Person Signing Chairman/Manager	Date February 1, 2005
WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, § 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, § 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, § 503).	

SECTION III - TO BE COMPLETED BY ASSIGNEE

1. Name of Assignee American Telecasting of Denver, Inc.		FCC Registration Number (FRN) 0004357141	
Mailing Street Address or P. O. Box 401 9th Street, NW, Suite 400	City Washington	State DC	Zip Code 20004

2. Is this application a *pro forma* transaction?

☐ YES ☒ NO

If YES, attach as an Exhibit describing the nature of the *pro forma* transaction.

Exhibit No.

3. Is this application for an involuntary assignment of the authorization?

☐ YES ☒ NO

If YES, attach as an Exhibit a copy of the court order or other legal instrument pursuant to which the assignment of license to the assignee is sought.

Exhibit No.

4. Does the contract submitted in response to Question 6 of Section II embody the full and complete agreement between the assignor and assignee?

☒ YES ☐ NO

If NO, explain in an Exhibit.

Exhibit No.

5. The assignee is a(n): (check one)

☐ Individual ☐ General Partnership ☐ Limited Partnership
☒ Corporation ☐ Association ☐ Other

If the "Other" box is checked, attach as an Exhibit a statement describing the nature of the assignee, the laws under which it is organized, and the names and addresses of the owners, principals, officers and directors of the assignee.

Exhibit No.

6. (a) If the assignee is a partnership, attach as an Exhibit the following information for each partner: (i) name; (ii) address; and (iii) nature of the partnership interest.

Exhibit No.

(b) For each general partner also provide: (i) the number and percentage of votes held; and (ii) other existing attributable interests in any cable television system, including the nature, size and location of such interests.

7. If applicable, complete the following certifications:

(a) By checking YES, the assignee certifies that no limited partner will be involved in any material respect in the management or operation of the proposed station.

☐ YES ☐ NO
☒ NOT APPLICABLE

If NO, the assignee must attach as an Exhibit the following information with respect to all limited partners actively involved in the FCC regulated activities of the partnership: (i) the nature of the partnership interest; (ii) the number and percentage of votes held; and (iii) other existing attributable interests in any cable television system, including the nature, size and location of such interests.

Exhibit No.

(b) Does any investment company (as defined in 15 U.S.C. § 80a-3), insurance company, or trust department of any bank have an aggregated holding consistent with 47 C.F.R. § 21.912, Note 1(c)?

☐ YES ☒ NO
☐ NOT APPLICABLE

By checking YES, the assignee certifies that the entity holding such interests exercises no influence or control over the assignee, directly or indirectly, and has no representatives among the officers and directors of the assignee.

☐ YES ☐ NO
☒ NOT APPLICABLE

8. If the assignee is a corporation or association, answer the following:

(a) Under the laws of what state or country is it organized? Delaware

(b) If the assignee is a corporation, is it duly incorporated and in good standing?

☒ YES ☐ NO

SECTION III (continued)

(c) Is more than one-fifth of the capital stock owned of record or may it be voted by aliens or their representatives, or by a foreign government or representatives thereof, or by any corporation organized under the laws of a foreign country?

☐ YES ☒ NO
☐ NOT APPLICABLE

(d) Attach as an Exhibit the names and address of all stockholders owning and/or voting 5% or more of the assignee's stock and the percentage of stock held by each stockholder.

Exhibit No.
5

9. (a) Is the assignee directly or indirectly controlled by any other corporation?

☒ YES ☐ NO

If YES, submit an Exhibit providing the name and address of such controlling corporation.

Exhibit No.
6

(b) Under the laws of what state or country is it organized? Delaware

(c) Is more than one-fourth of the capital stock of such corporation owned of record or may it be voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country?

☐ YES ☒ NO

(d) Is the above-described controlling corporation in turn a subsidiary?

☒ YES ☐ NO

If YES, submit an Exhibit which answers Items 9(a) through (c) for each such corporation, including the organization having final control.

Exhibit No.
6

10. Attach as an Exhibit a statement of the assignee's principal business.

Exhibit No.
7

11. Is the individual assignee or, if a partnership, each member of the partnership, a citizen of the United States?

☐ YES ☐ NO

☒ NOT APPLICABLE

12. Is the assignee or any party to this application a representative of an alien or of a foreign government?

☐ YES ☒ NO

☐ NOT APPLICABLE

13. (a) Has the assignee or any party to this application had any FCC station license or permit revoked or had any application for permit, license or renewal denied by the Commission?

☐ YES ☒ NO

(b) Has any court finally adjudged the assignee, or any person directly or indirectly controlling the assignee, guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or other means of unfair methods of competition?

☐ YES ☒ NO

(c) Has the assignee, or any party to this application, or any person directly or indirectly controlling the assignee, ever been convicted of a felony by any state or Federal court?

☐ YES ☒ NO

If the answer to any of the above is YES, attach as an Exhibit a statement relating the facts.

Exhibit No.

14. Does the assignee directly or indirectly, through stock ownership, contract or otherwise, have an ownership or control interest in any other communications entities?

☒ YES ☐ NO

If YES, attach as an Exhibit describing the interest, and the location(s) and call sign(s), if any.

Exhibit No.
8

15. Is the assignee directly or indirectly interested in or affiliated with, or does the assignee have leasing arrangements with, a cable television company?

☐ YES ☒ NO

If YES, attach as an Exhibit a description of the relationship and overlap, if any, of the boundaries of the cable franchise area and the station's protected service area.

Exhibit No.

16. (a) Is the assignee personally familiar with the Commission's Rules governing MDS?

☒ YES ☐ NO

(b) Has the assignee examined the subject facilities and determined that construction and operation are in compliance with the current authorization and the Commission's Rules?

☒ YES ☐ NO

SECTION III – (continued)

(c) Does the assignee acknowledge that, if the Commission consents, the assignment must be completed within 45 days of the date of consent and that the Commission must be notified in writing within 10 days of the date of consummation?

☒ YES ☐ NO

17. Will the assignee have control of the station(s), both as to physical operation and the service provided?

☒ YES ☐ NO

If NO, attach as an Exhibit a copy of any contract which may affect the assignee's right to do so.

Exhibit No.

18. Does the assignee certify to its financial ability with respect to construction and/or operation of the station?

☒ YES ☐ NO

CERTIFICATION

19. By checking YES, the applicant certifies that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits that includes FCC benefits pursuant to § 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, or, that in the case of a non-individual applicant (e.g., corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits that includes FCC benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. § 1.2002(b). Failure to check YES may cause dismissal of your application.

☒ YES ☐ NO

The **ASSIGNEE** acknowledges that all the statements made in this application and the attached Exhibits are considered material representations, and that all Exhibits are a material part hereof and incorporated herein.

The **ASSIGNEE** represents that this application is not filed for the purpose of impeding, obstructing or delaying determination on any other application with which it may be in conflict.

In accordance with 47 C.F.R. § 1.65, the **ASSIGNEE** has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in information furnished.

I certify that the **ASSIGNEE'S** statements in this application are true, complete and accurate to the best of my knowledge and belief, and are made in good faith.

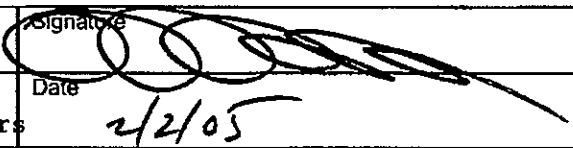
Type or Print Name of Person Signing Luisa L. Lancetti	Signature 
Title of Person Signing Vice President, Wireless Regulatory Affairs	Date 2/2/05
WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, § 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, § 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, § 503).	

Exhibit 1
Section I, Item No. 2

Licenses to be Assigned
Call Signs and Description of Partitioned BTA

CALL SIGN	LOCATION (CITY, STATE)	FILE NUMBER	EXPIRATION DATE
B110 (to be partitioned)	Denver, CO		3/28/06
KNSC838	Ponderosa Park, CO	19970214LI	3/28/06
KNSC838H01	Ponderosa Park, CO	20000818BXO	3/28/06
KNSC839	Ponderosa Park, CO	19970214LJ	3/28/06
KNSC840	Ponderosa Park, CO	19970214LK	3/28/06
KNSC840H01	Ponderosa Park, CO	20000818BZS	3/28/06
KNSE325	Ponderosa Park, CO	19970214LG	3/28/06
KNSE326	Ponderosa Park, CO	19970214LL	3/28/06
KNSE327	Ponderosa Park, CO	19970214LH	3/28/06
KNSE324	Denver, CO	19970428SO	3/28/06

This assignment application also seeks to convey a portion of the Denver, CO BTA (B110). The parties intend for the BTA to be partitioned or split from its northern-most border to its southern-most border along the longitude line at 106°, per Section 27.15(b) of the Commission's Rules.

The portion of the BTA East of the 106° longitude line will be conveyed to American Telecasting of Denver, Inc. The portion of the BTA West of the 106° longitude line will be retained by Digital and Wireless Television, LLC. More specifically, and consistent with the staff advice regarding the requirements of the Universal Licensing System, the attached list of coordinates outlines the border of the partitioned BTA that will be assigned to American Telecasting of Denver, Inc.

Digital and Wireless Television, LLC

Exhibit 1

FCC Form 305

Page 2 of 4

Lat Deg	Lat Min	Lat Sec	Hem	Lon Deg	Lon Min	Lon Sec	Hem
38	26	48	N	106	00	43.5	W
40	44	42.2	N	106	00	43.5	W
40	44	3.7	N	106	00	0	W
40	43	36.1	N	105	59	23.9	W
40	43	16.4	N	105	59	15	W
40	42	34.7	N	105	59	17.4	W
40	41	41.4	N	105	58	17.9	W
40	40	40	N	105	58	7.7	W
40	39	30.5	N	105	57	19.1	W
40	38	50.9	N	105	57	13.9	W
40	38	32.4	N	105	56	52.5	W
40	37	0.2	N	105	56	47.2	W
40	36	22.4	N	105	55	46.7	W
40	34	21.3	N	105	55	14.5	W
40	34	14.3	N	105	54	50.9	W
40	33	43.7	N	105	54	33.2	W
40	32	7.1	N	105	54	16.3	W
40	31	17.2	N	105	54	38.5	W
40	30	50.9	N	105	54	14.2	W
40	31	23.8	N	105	52	46.3	W
40	31	14.7	N	105	52	6.7	W
40	30	25.3	N	105	51	7.4	W
40	29	10.6	N	105	51	15.7	W
40	28	23.2	N	105	48	22.1	W
40	28	15.5	N	105	48	37.7	W
40	27	51.2	N	105	48	14.1	W
40	26	50.5	N	105	48	18.8	W
40	25	35.4	N	105	49	0	W
40	22	51.2	N	105	47	12.1	W
40	20	51.4	N	105	44	48.8	W
40	20	56.8	N	105	44	29.7	W
40	18	45.5	N	105	42	6	W
40	18	10.6	N	105	41	6.7	W
40	17	23	N	105	41	6.7	W
40	17	4.1	N	105	40	48.1	W
40	16	5.3	N	105	40	39.5	W
40	15	37.9	N	105	39	10	W
40	15	43.6	N	105	03	16.6	W
40	00	0.4	N	105	03	17.6	W
40	00	3.1	N	104	08	59.4	W
40	31	28.1	N	104	08	50.3	W
40	31	24.2	N	103	34	52.9	W
41	00	6.2	N	103	34	26.5	W
41	00	8.6	N	102	03	4.1	W

Digital and Wireless Television, LLC

Exhibit 1

FCC Form 305

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40	00	11.1	N	102	03	4.6	W
40	00	8.2	N	101	24	38.2	W
39	34	6	N	101	24	48.5	W
39	34	5.8	N	101	23	19	W
39	08	6.4	N	101	23	28.7	W
39	08	5.1	N	101	28	39.9	W
38	42	0.2	N	101	29	3.1	W
38	41	51.2	N	102	02	41.1	W
38	36	54.8	N	102	02	41.4	W
38	36	44.6	N	103	10	20.8	W
38	31	30.6	N	103	10	20.5	W
38	31	20.6	N	104	03	12.2	W
39	07	41.9	N	104	03	3.7	W
39	07	46.9	N	105	19	42	W
38	41	50	N	105	19	42.9	W
38	41	36.8	N	105	58	9.1	W
38	41	28.3	N	105	57	42.8	W
38	41	24.6	N	105	57	15.7	W
38	41	24.8	N	105	56	41.1	W
38	41	5.5	N	105	56	37.4	W
38	40	47.7	N	105	55	32.3	W
38	40	37.3	N	105	55	19.5	W
38	40	21.2	N	105	55	27.8	W
38	40	9.8	N	105	55	30.7	W
38	39	58.9	N	105	55	29.7	W
38	39	46.1	N	105	55	9.1	W
38	39	35.3	N	105	55	13.2	W
38	39	34.4	N	105	54	59.6	W
38	39	13.7	N	105	54	44.5	W
38	39	7	N	105	54	25.6	W
38	38	44.1	N	105	54	45.4	W
38	38	21	N	105	54	38.1	W
38	37	59.8	N	105	55	1.8	W
38	37	44.7	N	105	54	41.1	W
38	37	28.9	N	105	54	9.2	W
38	37	27.7	N	105	53	59.3	W
38	37	19.1	N	105	53	56.8	W
38	37	24.8	N	105	53	35.6	W
38	37	7.4	N	105	53	3.7	W
38	36	54	N	105	53	6.1	W
38	36	2.1	N	105	52	38.9	W
38	35	11.3	N	105	53	22.3	W
38	34	23.9	N	105	53	30.9	W
38	34	9.8	N	105	53	6	W
38	33	42.1	N	105	53	3.5	W
38	33	28.9	N	105	53	34.1	W

Digital and Wireless Television, LLC

Exhibit 1

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38	33	2.3	N	105	53	36.7	W
38	32	54.8	N	105	54	10.3	W
38	31	56.5	N	105	54	18.6	W
38	31	42.7	N	105	54	10.3	W
38	31	21	N	105	54	28	W
38	30	53.6	N	105	54	26.3	W
38	30	42	N	105	54	16.1	W
38	30	22.6	N	105	54	22.6	W
38	30	12.1	N	105	56	15.4	W

Exhibit 2
Section II, Item No. 4(a) and (b)

The following stations to be conveyed in this transaction are not constructed:

CALL SIGN	LOCATION (CITY, STATE)	FILE NUMBER	CONSTRUCTION DEADLINE DATE
KNSC838	Ponderosa Park, CO	19970214LI	8/16/03*
KNSC838H01	Ponderosa Park, CO	20000818BXO	8/16/03*
KNSC839	Ponderosa Park, CO	19970214LJ	8/16/03*
KNSC840	Ponderosa Park, CO	19970214LK	8/16/03*
KNSC840H01	Ponderosa Park, CO	20000818BZS	8/16/03*
KNSE325	Ponderosa Park, CO	19970214LG	8/16/03*
KNSE326	Ponderosa Park, CO	19970214LL	8/16/03*
KNSE327	Ponderosa Park, CO	19970214LH	8/16/03*
KNSE324	Denver, CO	19970428SO	8/16/03*

* Construction deadline date has been suspended by the FCC pursuant to the *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, WT Docket No. 03-66, released April 2, 2003.

Pursuant to former Section 21.934(c) of the Commission's Rules, the anti-trafficking provision of former Section 21.39 does not apply to the BTA stations listed above.

Digital and Wireless Television, LLC

Exhibit 3

FCC Form 305

Page 1 of 1

Exhibit 3

Section II, Item No. 5

MDS Lease and Option Agreement

and

First Amendment to MDS Lease and Option Agreement

Digital and Wireless Television, LLC and American Telecasting of Denver, Inc. are parties to an MDS Lease and Option Agreement, as amended by a First Amendment to MDS Lease and Option Agreement (the "Agreement"). Pursuant to the Agreement, American Telecasting of Denver, Inc. leases use of certain spectrum in the Denver metropolitan area from Digital and Wireless Television, LLC.

Denver, CO
G Group
-
WHR780

RECEIVED
WHR-780
APR 15 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

INSTRUCTIONAL TELEVISION

FIXED SERVICE

SERVICE AGREEMENT

SCHOOL DISTRICT NO. 1, CITY AND COUNTY OF DENVER

AND

AMERICAN TELECASTING OF DENVER, INC.

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ITFS SERVICE AGREEMENT

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

THIS ITFS CHANNEL LEASE SERVICE Agreement ("Service Agreement") is entered into this ____ day of _____, 1993, between Denver Public Schools, School District No. 1, City and County of Denver (DPS) having its principal place of business at 900 Grant Street, Denver, Colorado 80203 (hereinafter referred to either as "DPS", "Lessor" or "Carrier"), and American Telecasting of Denver, Inc., having its principal place of business at 4065 North Sinton Road, Suite 201, Colorado Springs, Colorado 80907 (hereinafter referred to either as "ATI" or "Lessee"). This agreement supersedes that certain agreement dated April 27, 1993 between DPS and TV Communications Network, Inc., which was assigned to ATI and which is hereby rescinded in its entirety and replaced by this Agreement.

WITNESSETH

WHEREAS, DPS is the licensee with the Federal Communications Commission (hereinafter referred to as the "FCC") for the license in the Instructional Television Fixed Service (hereinafter referred to as "ITFS") channels D-1, D-2, D-3, D-4, G-1, G-2, G-3 and G-4 (hereinafter referred to as the "Channels"), as designated by Subpart K of Part 21 of the FCC's Rules for the City and County of Denver and the immediately surrounding metropolitan area (hereinafter referred to as the "Market Area"); and

WHEREAS, ATI desires to lease the excess capacity on all the Channels from DPS and DPS is willing to lease such excess channel capacity to ATI for all lawful purposes consistent with the License, as the same may be amended from time to time;

NOW, THEREFORE, in consideration of the premises and of the exchange of the mutual promises, undertakings, covenants and conditions set forth herein, the parties hereto do hereby agree as follows:

1. DEFINITIONS: As used in this Agreement, the following terms shall have the meanings indicated:

(a) Channel Bandwidth. The width of the frequency band in Hertz that is allocated to that particular channel.

(b) "Commenced Construction" means the date that ATI delivers to DPS verification that sufficient equipment to complete all construction of the Transmission Facilities has been ordered with confirmed delivery dates of not more than (90) days from date of order.

(c) Instructional television fixed station (ITFS). A fixed station operated by an educational organization and used primarily for the transmission of visual and aural instructional, cultural, and other types of educational material to one or more fixed receiving locations.

(d) "License Date" means the date on which the FCC issues an authorized license upon completion and testing of the facility for the Channels for the market.

(e) Microwave Frequencies. This term refers to frequencies of 890 Mhz and above.

(f) Multichannel Multipoint Distribution Service (MMDS). Those multipoint distribution service channels that use the frequency band 2596 Mhz to 2686 Mhz and associated response

channels.

(g) Multipoint Distribution Service (MDS). A one-way domestic public radio service rendered on microwave frequencies from a fixed station transmitting (usually in an omnidirectional pattern) to multiple receiving facilities located at fixed points.

(h) Point-to-Point Microwave Radio Service. A domestic public radio service rendered on microwave frequencies by fixed stations between points which lie within the United States, or between points to its possessions or to points in Canada or Mexico.

(i) Service Agreement. Service Agreement shall include this ITFS Service Agreement.

(j) Subsidiary channel. A subsidiary channel is any portion of an authorized channel not used for main channel transmissions.

(k) Subsidiary Communications Service. Subsidiary communications services are those transmitted within the TV aural baseband signal, but do not include services which enhance the main program broadcast service or exclusively relate to station operation (see § 73.665(a), (b), and (c)). Subsidiary communications include, but are not limited to, services such as functional music, specialized foreign language programs, radio reading services, utility load management, market and financial data and news, paging and calling, traffic control signal switching, and point-to-point or multipoint messages.

(l) "Start Date". The start date shall be the date so designated in writing by DPS to ATI, after the channel tests are complete, and after the issuance of the pertinent license by the

FCC to DPS. The Transmission Fee shall commence and be payable on the start date.

(m) STL. Television STL Station (Studio Transmitter Link). A fixed station used for the transmission of television program material and related communications from a studio to the transmitter of a television broadcast station.

(n) Subscription Television. A system whereby subscription television programs are transmitted and received.

(o) "Transmission Equipment/Facilities" means the equipment and facilities owned by ATI and used by ATI for transmission of the Channels.

(p) "VBI" (Vertical Blanking Interval). This term refers to the first twenty-one (21) horizontal lines at the start of a TV picture, which are not visible. (525 horizontal lines constitutes a complete TV picture).

(q) Vertical Blanking Interval (VBI) Service. Telecommunications services permitted on the vertical blanking interval (VBI) service include the transmission of data, processed information, or any other communication in either a digital or analog mode, and shall include both the associated channels and vertical blanking interval subsidiary.

2. CONDITION OF AGREEMENT. This Agreement is conditioned on the FCC's order granting DPS's licenses for the four (4) D Group ITFS Channels and the four (4) G Group ITFS Channels in Denver, Colorado at ATI's transmission site at Eldorado Mountain becoming

a Final Order. By "Final Order" the parties mean an action or order of the FCC which is not reversed, stayed, enjoined, vacated, set aside, annulled or suspended and with respect to which no request for administrative or judicial review is pending and as to which the time for filing any such request, or for the FCC to set aside the action on its own motion, has expired. At such time, if any, as it may be established that no final order shall enter granting such licenses, then this agreement shall terminate.

3. USE OF THE CHANNELS.

(a) Air Time. DPS hereby promises to provide to ATI, during the term of this Service Agreement, all of the excess capacity air time on all bandwidths authorized by the FCC on all of the Channels within the scope of use specified in Paragraph 3(b).

(b) Use of Excess Capacity. Commencing on the Start Date, as the term is defined in this Agreement, DPS hereby permits ATI to use all Excess Capacity, as designated by DPS in accordance with paragraph 3(c) of this Agreement, on the Channels in the Denver, Colorado metropolitan area. ATI agrees to use Excess Capacity on the Channels to transmit pay television programming and other telecommunications services to subscribers. All ATI programming to be used on the Excess Capacity of the Channels will be included as part of the Company's Wireless Cable service to its customers, but at all times will face the ultimate approval of the Denver Public Schools prior to transmission. Attached to this ITFS Service Agreement (as Exhibit A) is a list of programming sources that the company is considering as part of ATI's expanded package

with the addition of the eight (8) DPS channels.

(c) Excess Capacity. "Excess Capacity" means transmission time, as designated by DPS, over the ITFS Channels (including their subcarriers and Vertical Blanking Intervals) which time is not used by or reserved for use by DPS. The definition of "Excess Capacity" as it relates to this agreement, also includes (but is not limited to) the 24-Hour, seven-days a week, every week of the year, usage of the Vertical Blanking intervals and the subcarriers of all eight (8) DPS ITFS channels. For each ITFS Channel, DPS shall designate Excess Capacity for each semester in writing, such designation to be delivered to ATI at least thirty (30) days prior to the first day of the month for which the designation is made. Any changes that might occur in said Excess Capacity designation during the semester will also be delivered to ATI by mail, by fax or by hand at least thirty days (30) prior to the implementation of such changes. Consistent with the rules and policies of the FCC, DPS shall designate at least 148 hours per week on each ITFS Channel as Excess Capacity and as many as 168 hours usage per channel (i.e. full time usage) if ATI is offering sufficient programming approved by DPS and qualified as educational, cultural, or vocational programming under the rules and regulations of the FCC. Examples of said programming sources that do qualify as educational programming are noted on Exhibit A to this Agreement. However, DPS may designate less than 148 hours per week per channel as excess capacity if necessary to enable it to transmit ITFS programming, provided ATI is given at least ninety

(90) days advance written notice and provided that the excess capacity available to ATI does not fall below 128 hours per week per channel. In the event Lessor intends to utilize more than forty (40) hours per week per channel, Lessee shall have the option of terminating this agreement upon six (6) months written notice to DPS. During week-ends, holidays, and whenever the schools are not in session or teachers are not required to report for work, all 168 hours shall be designated as Excess Capacity. In the event that DPS designates less than 148 hours per week per channel, the monthly royalty payments attributable to such channel shall be reduced proportionately. ATI's Excess Capacity use of the DPS channels will coincide with the Start Date or, as soon as practicable thereafter but in any case no later than issuance of the license by the FCC.

(d) Scope of Use. The Channels are provided to ATI hereunder for various purposes, including the transmission of programming to be provided by ATI, and/or by others of ATI's selection, from the Transmission Point to and throughout the Market Area to reception points selected by ATI. DPS shall have the exclusive right to approve all programming on the channels prior to transmission thereof, which approval shall not be unreasonably withheld. Should ATI so choose, the Channels may be operated utilizing bandwidth compression, if possible. The scope of use shall include vertical blanking intervals and the associated subcarrier and subsidiary channels. There shall be no prior approval restriction on the format or type of information or

signals to be transmitted on the blanking intervals and the associated subcarriers used by ATI unless otherwise prohibited by law or FCC regulation, provided that DPS shall be notified of the general substance of all information broadcast on the blanking intervals and related subcarriers and retains final right of approval of such information.

(e) Additional or Different Uses. The parties recognize that advances in technology and the development of new information networks may create opportunities for additional or different uses for the channels other than those now contemplated by this agreement. Should ATI wish to use any channel or part of any channel, including subsidiary channels, vertical blanking intervals, and subcarriers, for sale to any third party other than for educational programming or the sale of television programming, ATI shall notify DPS in writing of its intention, including the nature and scope of the proposed use. Following such notice the parties shall negotiate in good faith regarding the terms and conditions of such use, including, but not limited to, appropriate compensation. No channel or subchannel shall be used for any purpose other than educational programming and the sale of pay television programming as specified in this agreement until such time as the parties have agreed upon the terms and conditions of such new or additional use.

(f) Obligation to Transmit. ATI is obligated to provide transmission of sufficient educational programs to meet the FCC requirements of the DPS to retain the licenses of the eight ITFS

channels. ATI is also obligated to provide transmission of the programs created by the DPS, and other programs purchased by DPS. Subject to the parties' rights pursuant to other Paragraphs herein, nothing in this Service Agreement shall be construed to obligate or create a duty on the part of ATI to actually provide the maximum number of hours of programming possible during ATI's air time covered hereby, but the absence of programming shall not relieve ATI of its obligation to pay DPS the fees due hereunder.

(g) Preemption. The Channels provided to ATI hereunder are subject to preemption by DPS for reasons of national or local emergency or in accordance with any requirement or order of the FCC or any other local, state or federal regulatory authority with jurisdiction over operation of the Channels.

4. TERM.

(a) Initial Term. Subject to the provisions for earlier termination provided for herein, the initial term of this Service Agreement shall commence upon the date hereof and shall continue in full force and effect until five (5) years after the Start Date as defined herein. Said period is hereinafter referred to as the "Initial Term".

(b) Renewal Terms. At the end of the initial terms, ATI shall have the right to renew this agreement for two additional terms of five (5) years each upon notice, given in written form six (6) months prior to expiration of the initial term or first renewal term. Said period is hereinafter referred to as the "Original Renewal Terms". The terms and conditions of subsequent agreements,

if any, concerning use of the Channels following expiration of the original renewal terms shall be negotiated by the parties.

5. FACILITIES.

(a) Transmission Point. DPS's FCC license for the Channels specifies a particular transmission point (hereafter the "Licensed Transmission Point"). The "Licensed Transmission Point" is not capable of providing the necessary height for line-of-sight to the receive sites at all the schools. ATI intends to change such Transmission Point to Eldorado Mountain and, in such event, DPS agrees to file any necessary and permissible amendment to the Application pursuant to Section 21.23 of the FCC's Rules or any necessary and permissible modification application or notification with the FCC in accordance with Sections 21.40-42 of its Rules. In such event, ATI shall prepare all necessary FCC documents and shall reimburse DPS for DPS's reasonable and actual costs and expenses, including legal, accounting, engineering and attorney fees, actually incurred by DPS to prepare, file and prosecute such amendment, application, or notification. DPS and ATI agree, by signatures affixed hereto, that a co-location of the DPS ITFS transmission facility to ATI's Eldorado transmission site would be in the interests of both parties, the Denver Public School System, and the public-at-large. Any and all leases, licenses, permits, authorizations, engineering surveys, legal opinions or assistance, or approvals necessary to acquire the new DPS transmission site at Eldorado Mountain shall be obtained by ATI, in its own name and at its sole cost and expense. Immediately upon execution of this

agreement, ATI will begin ordering such equipment as may be required. ATI shall immediately commence installation upon delivery of the necessary equipment and shall thereafter complete installation in a timely manner. ATI shall, at its sole cost and expense install the transmitter equipment. The construction shall comply in all respects with the FCC's technical standards and DPS's authorizations reflecting technical changes agreed to by both parties prior to approving the Excess Capacity Use, and the transmission facilities shall be appropriate for their intended use so as to permit DPS to fulfill all ITFS transmission requirements of the FCC.

(b) STL Facilities. Upon the construction of a TV production studio by ATI, the studio facility will be made available for use to DPS at no charge. The time of usage shall be coordinated with ATI so as to avoid a conflict. ATI will permit DPS to use ATI's studio at the rate of four hours per day, five days per week, thirty-six weeks per calendar year. ATI will dedicate up to one-half of the permanent studio time usage to DPS during all times not utilized by ATI. This will be coordinated through, and by direct contact with, the facility Manager. If no such studio is constructed by ATI, then no later than November 30, 1994, ATI shall provide DPS with a studio transmitter link and shall pay to DPS up to a maximum of \$70,000.00 for construction by DPS of its own studio facility for use by DPS to broadcast over the channels as provided by this agreement.

(c) Transmission Facilities. The Parties have herein agreed to the Transmission Facilities which will be required to commence operation of DPS' ITFS Service, and agree to meet from time to time thereafter as mutually agreed to determine and decide any additions to the Transmission Facilities as may be appropriate. ATI, under the direction and control of DPS, shall be responsible for the design and timely construction of the Transmission Facilities in accordance with the Authorization and the terms of the Agreement. ATI shall bear all costs associated with such activities, including but not limited to all consultant, design, engineering, lease, repair personnel, site acquisition, utilities and insurance as well as legal fees associated with the construction, equipment, relocation and engineering of the facility. ATI shall notify DPS of the completion of construction of the Transmission facilities and the date on which the Transmission facilities became operational.

(d) Construction Schedule. Immediately upon execution of this agreement, ATI agrees to prepare an application for locating the transmission facilities at the Eldorado Mountain site. Upon approval of such application, ATI shall immediately commence construction of the transmission facilities in accordance with DPS's FCC conditional license. ATI shall complete construction within one hundred twenty (120) days of the FCC's approval of the modification application relocating the transmission site to Eldorado Mountain. Construction shall be completed in compliance with the conditional license and in such manner that a

certification letter of completion of construction shall be filed with the FCC upon completion of such construction.

(e) Transmitter Equipment. ATI shall select, purchase and install such transmitters and other equipment (hereinafter "Transmitter Equipment") as are required to operate the Channels in accordance with the provisions of DPS's FCC authorization and which meet all specifications and requirements of the FCC and any other government agency or body, subject to the approval of such equipment by DPS, which approval shall not be unreasonably withheld. All transmitter equipment used in the construction of the Transmission Facilities shall be owned by DPS and leased to ATI for the sum of One Dollar (\$1.00) per year for the entire Initial Term, all Renewal Terms thereof, and for all years thereafter so long as DPS and ATI remain in contractual relationships regarding the use of the channels. None of the Transmitter Equipment shall be altered, disconnected, rearranged, removed or replaced by ATI without DPS's prior written consent, except in the ordinary course of repair or maintenance of the equipment, at the termination or expiration of this Service Agreement, DPS will continue to own the Transmitter Equipment.

(f) Lease of Transmission Point. Within ten (10) days after the execution of this Service Agreement by DPS and ATI, ATI agrees to increase its lease of sufficient space at Eldorado Mountain for the installation and operation of the additional DPS transmitter equipment. ATI will exercise its best efforts to ensure that the site lease shall provide for the leasing of

sufficient space for the entire Initial Term and any renewals thereof and for full and equal rights of access by DPS and by ATI or by the authorized representatives of either.

(g) Power Increase. If ATI so requests, DPS will file an amendment to the Application or a modification with the FCC seeking authority to increase the output power of the Channels to a higher level requested by ATI, provided that such higher level is in accordance with the FCC regulations and will not cause or be reasonably anticipated to cause harmful electrical interference to any other radio transmission facility for which an application has previously been accepted by the FCC or authorization granted by the FCC, and which is entitled to protection from such interference under FCC rules and regulations. In the event that said authorization for power increase is obtained, ATI, at its sole expense, shall provide and install appropriate amplifiers and related equipment in order to effect said power increase and such amplifiers and equipment shall thereupon become part of the Transmission Equipment. ATI shall reimburse DPS for all reasonable costs, including legal, engineering and other expenses actually incurred by DPS and associated with said application and power increase.

(h) Governmental and Third Party Authorizations. DPS shall use its best efforts, and ATI shall cooperate with DPS, to obtain any and all FCC licenses, permits, authorizations of approvals required to carry out the transactions contemplated by this Service Agreement, provided, however, that the DPS shall not

be required to pay for the reallocation, reconstruction, or similar costs related to the waiver of the interference protection rights of co-channel or adjacent channel facilities in the Instructional Television Fixed Service ("ITFS"), as authorized under Part 74, Subpart I, of the FCC's rules. ATI shall use its best efforts and its good offices to assist DPS in obtaining necessary clearances from co-channel and adjacent channel ITFS operators as necessary. ATI shall use its best efforts to assist DPS to acquire, maintain and renew licenses for the Channels license, and ATI shall bear all the costs associated thereof, including reimbursing DPS for its reasonable expenses actually incurred in these procedures.

(i) Transfer of Title to Transmitter Equipment. Upon the execution of this Agreement and the installation of the transmitter and receive equipment, the transmitter and receive equipment shall, at DPS's option, be transferred to DPS by a bill of sale, and the transmitter equipment for the eight DPS ITFS channels and receive equipment shall become the property of DPS. In order to facilitate DPS's rights under this Section, ATI agrees to keep the transmitter equipment and receive equipment free and clear of all liens and encumbrances (including purchase money security interests) and shall promptly give DPS notice of the creation or assertion by any person or entity of any such lien or encumbrance.

(j) Lease of Transmitter Equipment to ATI. In the event DPS becomes the owner of the transmitter equipment, DPS shall lease the transmitter equipment to ATI for a term equal to the duration

of this Agreement, including the additional term(s), if applicable and for so long as DPS and ATI have contractual agreements for the use of these ITFS channels, for the sum of One Dollar (\$1), the receipt and sufficiency of which are hereby acknowledged by DPS.

(k) Operation, Maintenance and Repair. ATI shall manage, operate, maintain and repair the transmitter equipment, at its expense, in accordance with all applicable requirements of the FCC and this Agreement. Maintenance, operation and repair will be performed by technically qualified personnel under ATI's direct and continuing day-to-day supervision and in accordance with good engineering practices consistent with industry standards. Maintenance and repair shall include replacement of components where necessary. ATI will also train any engineering staff so designated by DPS in the operation and maintenance of the DPS ITFS facility, and ATI will also train school level engineering or maintenance staff personnel in trouble shooting in school technical problems. ATI will install a separate phone line dedicated for response to DPS and school level phone calls and distribute a list of pager numbers of ATI technicians for emergency repair usage.

(l) Control of Facilities. Notwithstanding anything in this Agreement to the contrary, DPS shall have ultimate control, in accordance with FCC rules and policies, of the construction, operation, management and maintenance of its respective portion of the transmission facilities.

6. OPERATION OF THE CHANNELS.

(a) Operation of the Transmission Equipment.

Notwithstanding anything in this Service Agreement to the contrary, DPS shall have ultimate control and general supervisory responsibility in accordance with FCC rules and policies, of the construction, operation, management and maintenance of its respective portion of the Transmission Facilities; provided, however, that any loss or damage caused by ATI's negligent or intentional failure to properly maintain its respective portion of the Transmission Facilities (including the losses, charges, and expenses associated with the meeting of radiation standards and claims with respect to RF radiation) shall be the sole responsibility of ATI. Without limiting the foregoing, DPS shall have the right: (1) to issue general written instructions covering the operation and maintenance of its respective portion of the Transmission Facilities; (2) to direct the day-to-day activities of ATI employees or agents (but only to the extent that they relate to the proper operation of its respective portion of the Transmission facilities under FCC rules and policies); (3) to inspect its respective portion of the Transmission Facilities at any time during operation; (4) to consult with the operating and maintenance records and procedures, and investigate operational complaints; and (5) to require ATI to provide written semi-annual reports on the operation of its respective portion of the Transmission Facilities, including a summary of information from the operating and maintenance records and a description of all complaints, breakdowns and repairs. ATI shall supply, at its sole cost an expense, personnel to operate and maintain the transmission equipment, which

shall at all times meet the technical operating requirements set forth in DPS's FCC license and the rules and regulations of the FCC. All operations and maintenance activities shall be maintained 24 hours every day. DPS and ATI shall cooperate to ensure that each of them is advised of any and all operational, maintenance and repair activities on equipment owned by DPS pursuant to this agreement. All repairs shall be completed as soon as reasonably possible. ATI shall not disconnect or remove any of the transmitter equipment without DPS's written consent, except as is necessary for troubleshooting, maintenance or repair. Both DPS and ATI shall have full and equal rights of access to the station facilities at all times for the purpose of FCC compliance. DPS shall not be liable for any costs or expenses arising as a result of ATI's work on the transmitters or equipment pursuant to this Paragraph.

(b) Operation of Additional Equipment. ATI, at its own expense, and with the prior written knowledge of DPS, may make alterations or install attachments to the Transmitters or Transmission Equipment (including, without limitation, encoding and/or addressing equipment selected by it) as may be required by the exigencies of its business from time-to-time, provided that: (1) such alterations and attachments do not violate any FCC rules or regulations; (2) FCC authorization, if required, has been obtained; (3) such changes are made subject to DPS's approval and under its supervision; and (4) such changes do not otherwise interfere with DPS's rights under this agreement. DPS shall use

its best efforts to obtain any required FCC authorization and ATI will reimburse DPS for its reasonable expenses actually incurred by DPS in obtaining same. Any equipment used in making such alterations or attachments shall be provided by ATI at its sole expense and shall thereupon become part of the Transmitters or Transmission Equipment. Subject to DPS's overall supervision, ATI shall be responsible for the operation, maintenance and repair of all equipment provided by it and shall pay all costs, including legal, engineering, equipment, construction, installation and other expenses associated with any alterations or attachments to the Transmission Equipment.

(c) Interference With Existing Operations. DPS and ATI will cooperate in the operation and maintenance of the Transmission Equipment as well as any alterations or attachments thereto, in such a fashion as to ensure that the Channels do not create or increase harmful interference with existing Multipoint Distribution Service ("MDS"), Operation Fixed Service ("OFS"), Instructional Television Fixed Service ("ITFS") facilities or any other applicants, permittees or licensees which are entitled to protection from such interference under the Rules of the FCC. Prior to commencing construction of any facilities to use frequencies in the ITFS band, DPS will obtain and file with the FCC all statements of consent and make all other necessary showings required by Section 22.901(d)(1) of the FCC's Rules and ATI will reimburse DPS for its reasonable expenses actually incurred by DPS in obtaining same.

(d) Reception Equipment. Beginning no later than April 1, 1994, and at a rate of up to thirty (30) sites per month, ATI agrees to install facilities to receive transmissions over the Channels at each of the one hundred sixteen (116) receive sites located at the DPS Schools in the Market Area, listed on Exhibit B, to be used for the education purposes of DPS and for monitoring the quality of such transmissions and compliance with the FCC's rules. Such facilities shall include such signal amplification as is necessary to enable reception within each classroom concurrently with Mile-Hi Cable signals received by DPS. The parties anticipate that some such receive sites are not within the line of sight of ATI's Eldorado Mountain transmission facilities and that additional equipment may be required to ensure proper reception at such sites. ATI shall install such equipment as is necessary to ensure proper reception at such facilities and shall do so no later than April 1, 1995, provided that ATI shall have no such obligation as to any site where the parties determine that reception cannot reasonably be provided because of topographic interference. For monitoring purposes, ATI will also install, at its sole expense and cost, reception equipment at 900 Grant Street (Denver Public Schools Administrative Building), 1089 Bannock (the Channel Six facility), and two other monitoring sites as chosen by DPS. Other than the foregoing, ATI has no responsibility hereunder to provide any other reception antennas, down converters, decoders, descramblers, related power supplies or any associated equipment ("Reception Equipment") required to display signals transmitted over the

Channels on a television set. ATI may, in its sole discretion and on terms and conditions of its choosing, install or cause to be installed such additional Reception Equipment for the ATI subscribers, provided and selected by ATI, as may be required, from time-to-time, in order for the general public, or any member thereof, to view the programs to be transmitted over the Channels. Title to all Reception Equipment provided by ATI hereunder, at the DPS receive sites noted above, shall vest in DPS or its designee. ATI shall be required to install any additional Reception Equipment only at particular locations selected by it or at other DPS receive sites only by mutual agreement of the parties.

(e) Program Origination and Delivery. ATI shall be solely responsible for the origination of all commercial programming to be transmitted over the Channels and any other use of the Channels and the delivery of such programming to the Transmission Point, including, but not limited to, the costs of point-to-point microwave channels and earth stations, if any, which it may require for such purpose. ATI shall bear all costs and expenses of purchasing, installing, operating and maintaining those facilities. Any personnel required to install, operate and maintain any commercial program origination and delivery facilities shall be provided by ATI, at its sole cost and expense, and such personnel shall be under ATI's exclusive control.

(f) Operating Expenses. ATI shall be solely responsible for and shall indemnify and hold DPS harmless from all commercial operating expenses. Said operating expenses shall include all

reasonable expenses incurred by DPS in providing service on ATI's behalf. Commercial operating expenses incurred by DPS shall be passed through each month on a dollar-for-dollar basis to ATI, and shall be immediately due and payable.

(g) Cooperation of DPS and ATI. DPS's use and operation of its Transmitter Equipment shall not interfere with ATI or cause damage to ATI's facilities or equipment. ATI shall use, operate and maintain its equipment and facilities (including any attachments installed to the Transmission Equipment) in such a way as not to interfere with DPS or cause damage to the Transmitter Equipment or the equipment at the facility.

(h) Control. DPS shall retain ultimate control over and responsibility for operation of the Channels and compliance with the FCC's rules.

7. CHANNEL LEASE SERVICE CHARGES.

(a) Commitment Fee. DPS hereby acknowledges receipt of the foregoing payments totalling \$50,000 from ATI's predecessor Lessor pursuant to ITFS Service Agreement superseded by this agreement. Such funds shall be immediately available for use by DPS. Such funds shall be credited toward ATI's obligation to pay monthly lease fee amounts under this agreement.

(b) Transmission Fee. Commencing on the Start Date and continuing thereafter for the Initial Term and Original Renewal Terms of the Service Agreement, ATI shall pay to DPS as

consideration for the Channels provided to ATI hereunder and the performance by DPS of its additional obligations hereunder, as follows:

During calendar year 1994, ATI shall make monthly payments equal to the greater of three thousand dollars (\$3,000.00) or thirty cents (\$.30) per subscriber.

Beginning January 1, 1995, and thereafter, such monthly payments shall equal the greater of four thousand dollars (\$4,000.00) or thirty cents (\$.30) per subscriber.

The first monthly payment will be due on the first of the month following the Start Date.

(c) Computation of Number of Subscribers. For purposes of this Service Agreement, the term "Subscribers" shall be deemed to mean the number of subscribers receiving the pay TV programming services of ATI as of the last day of the month in question, except that in the month in which service is terminated upon expiration of the Initial Term or a Renewal Term or pursuant to the termination provisions contained herein, the number of such subscribers shall be determined as of the date of termination. In those situations where programming is sold in bulk for viewing at isolated locations in the same facility (that is, where a number of viewing units are grouped for billing purposes such as may be the case with hotels, apartments and condominiums) and ATI's rates therefore are less than its prevailing monthly rate for the sale of ATI's programming to individual subscribers in the Market Area, the number of equivalent subscribers shall be determined by dividing the total

monthly revenues from said bulk billing by the then prevailing lowest basic monthly rate for similar wireless cable services to individual subscribers in the market area and the number of equivalent subscribers so calculated added to the subscriber count in lieu of the actual number of subscribers in those situations.

(d) Required Certificate, Invoice and Payment Procedures. ATI shall, within thirty (30) days of the end of each month after the Start Date, provide DPS with a Certificate signed by the general manager of ATI showing the amount of Gross Monthly Revenues for the preceding month and a computation of number of subscribers. The Transmission Fee payable by ATI to DPS, shall be computed on the Certificate, and ATI shall forward said Transmission Fee to DPS at the time of tendering the Certificate. ATI shall include on the Certificate any other information reasonably requested by DPS, so that DPS may accurately determine that the Transmission Fee tendered by ATI has been calculated correctly. Any other charges to be paid by ATI hereunder shall be invoiced to ATI on a monthly basis by DPS. Said invoices shall contain an itemization of the charges contained therein, and all such charges reimbursable hereunder shall be paid by ATI within fifteen (15) days after the date of its receipt thereof.

(e) Late Charges. Monthly Transmission Fees are due and payable on the 15th of the month following the calculated month. A late fee of 5% of the amount due will be assessed if the Transmission Fee is not received by the 1st of the month following the due month. At that point, until paid, a 1.5% per month finance

charge from the due date will be assessed in addition to the late fee. For example, the monthly fee for the month of May is due June 15th, a late fee of 5% would be assessed on July 1st and finance charges of 1.5% per month would start to accrue from June 15 if not paid prior to July 1st.

(f) Right to Audit. ATI and DPS shall, while this Service Agreement is in force, keep, maintain and preserve complete and accurate records and accounts, including all invoices, correspondence, ledgers, financial and other records pertaining to ATI's and DPS's charges hereunder, and such records and accounts shall be available for inspection and audit at the respective offices of ATI and DPS at any time or times during the time service is being provided to ATI hereunder, during reasonable business hours, by ATI or DPS or their respective nominees. DPS shall be entitled to audit ATI's records and accounts. From time to time and upon reasonable notice to ATI, DPS or its accountants or attorneys shall the right to request information or be permitted at all reasonable times to inspect and copy all records of ATI which DPS or its accountants or attorneys reasonably consider necessary to verify ATI's compliance with the terms and provision of this Agreement. It is understood by DPS that such information is to be held in confidence and not disclosed to any third parties without prior consent of ATI. ATI shall provide to DPS a subscriber report prepared within ninety (90) days following the end of each business year. The report would include a calculation of the fees owed on the subscribers under this agreement and compared with actual

payments made. Any shortage or excess would then be paid by ATI or DPS within 30 days of the report. If as the result of an audit, there is discovered underpayment of greater than five percent (5%) of any of the charges provided herein, the party which has suffered from the underpayment shall be entitled to reimbursement of its reasonable costs of said audit. ATI shall not interfere with DPS's exercise of its respective right of inspection and audit set forth herein. The exercise in whole or in part at any time or times of the right to audit records or accounts, or of any rights herein granted, or the acceptance by DPS of any statement or remittance tendered by or on behalf of ATI shall be without prejudice to any of its rights or remedies and shall not preclude DPS thereafter from disputing the accuracy of any such statement or payment. In the event that ATI or DPS disputes the amount of Gross Monthly Revenues determined by DPS in any audit hereunder, such dispute as to the amount of such Revenues shall first be attempted to be resolved by mutual discussion and negotiation. All information obtained by DPS during any audit shall be maintained on a confidential basis.

(g) Subscriber Contracts. ATI will from time to time enter into contracts with individuals in the market area for receipt of ATI's services and video subscription services (hereinafter referred to as "Subscribers"). DPS shall not interfere with the right to ATI or its designee to lawfully modify, waive, rescind, terminate, in whole or in part, or cancel any and all services or contracts with Subscribers. In case any such

services or contracts are rescinded, terminated or cancelled, DPS shall not be entitled to any participation in revenues or claims whatsoever with respect to the unperformed and unpaid portion of any such contract, provided, however, that DPS shall be entitled to payment for services rendered by ATI to a Subscriber for all or a portion of any month for which payment has been made by the Subscribers to ATI.

(h) Proration of Fees. In the event that: (1) the Start Date shall be a date other than the first day of a calendar month; or (2) this Service Agreement shall be terminated or expire on a date other than the last day of a calendar month and it is determined that such termination or expiration shall have occurred in a manner not affecting DPS's right to payments hereunder, the Transmission Fee due DPS in such month shall be pro rated.

8. CONDITIONS SUBSEQUENT. Except for the provisions hereof that relate to the rights and obligations of ATI and DPS which come into existence prior to the Start Date, all of the rights and obligations governing service on the Channels hereunder shall be subject to the following conditions subsequent, which conditions may be waived in writing by the non-defaulting party.

(a) FCC Action. ATI and DPS will cooperate, in a timely and diligent manner, to take all necessary and appropriate steps to secure from the FCC and to maintain and have renewed all authorizations required for DPS to provide the services to ATI as specified herein and will timely provide all necessary information and filings with the FCC, arranging for all necessary engineering

studies, obtaining all necessary government approvals and fulfilling all other usual and customary requirements associated with obtaining and maintaining such authorizations. DPS shall provide service on the Channels to ATI in accordance with the scope and intent of this Service Agreement. At no time will either party act in such a manner which has, or could potentially have, an adverse effect upon the status of DPS's Application and/or the ability or qualifications of DPS to hold or continue to hold the FCC authorizations for the Channels.

(b) Constructions. The Channels shall be constructed and shall be operational in accordance with the terms hereof.

(c) Laws and Rules. DPS's obligations hereunder are conditioned on ATI using the Channels in accordance with all applicable laws, FCC authorizations, FCC rules and regulations, and compliance by ATI with the terms of this Service Agreement. ATI's obligations hereunder are conditioned on DPS operating the Channels in accordance with all applicable laws, FCC authorizations and FCC rules and regulations and compliance by DPS with the terms of this Service Agreement.

9. AUTHORIZATIONS AND LICENSES, FURTHER EFFORTS.

(a) Modification of Authorization. Throughout the Initial Term and any Renewal Terms, ATI and DPS shall cooperate and use their best efforts to obtain and maintain in force all conditional licenses, licenses and authorizations required in connection with ATI's use of the Channels. Where requested to do so by ATI, DPS shall apply for, and use its best efforts to obtain,

those extensions of and/or reasonable modifications in its conditional licenses, licenses and authorizations, including, but not limited to, change(s) in the Transmission Point, which would help ATI in its business and to provide all necessary information and filings to the FCC, arrange all necessary engineering studies, obtain all governmental authorizations and fulfill all other usual and customary requirements associated with obtaining and maintaining such authorizations, and ATI will reimburse DPS for its reasonable expenses actually incurred by DPS in obtaining same. ATI shall prepare all documents to be filed with the FCC with the FCC and the DPS shall have the final approval of all documents before they are executed and filed with the FCC.

10. SPECIFICATIONS.

(a) Technical Specifications. Except as otherwise provided herein, the Channels shall at all times transmit signals which conform to the technical specifications and other relevant provisions of the FCC authorizations and the FCC's rules and regulations.

(b) Technical Exceptions. ATI-provided equipment and communications systems may be connected to the Transmission Equipment where such connection is made in accordance with the provisions hereof. Notwithstanding anything herein to the contrary, DPS shall not be responsible for: (1) the quality of signals generated as a result of equipment provided by ATI and connected to the Transmission Equipment or for defects caused by

such ATI-provided equipment and communications system; or (2) the reception at the Transmission Point of signals generated by equipment provided by ATI.

11. LIMITATION OF LIABILITY.

(a) In General. Without limitation, DPS will be without liability whatsoever for the following: (1) damage arising out of mistakes, omissions, interruptions, delays, errors or defects in transmissions caused by any act or omission of ATI or its employees, contractors or agents; (2) for failure in any way related to any equipment installed by ATI; (3) for failure caused by acts of God, sabotage, vandalism, or negligence or acts or omissions of any third party; or (4) for failure in any way related to the reception of programming at the Transmission Point. Moreover, DPS shall not be responsible for: (5) the quality of the signal delivered to it by ATI; (6) any degradations or outages in the delivery of ATI's signal to the Transmission Point which are the result of, or attributable to, the failure of transmission lines or equipment provided by, maintained by, or under the control of, ATI or any third party under agreement with ATI; (7) any outage which occurs at any reception point resulting from a failure of reception equipment or a distribution system at that reception point; or (8) any outage which is caused by a failure of Point-to-Point Channels, not under the control of DPS, which are used to deliver signals to the Transmitter Point.

(b) Damage to Premises. DPS shall not be liable for any

defacement of or damage to any premises resulting from the installation or removal of Transmitter Equipment, Reception Equipment or any other equipment from such premises by ATI.

(c) Risk of Loss. DPS shall have no responsibility for any loss or damage to the Transmission Equipment unless such loss or damage is caused by it or its employees or agents.

(d) Indemnification. ATI shall indemnify, defend and hold the DPS harmless from any and all claims, damages, causes of action, judgments, penalties, statutory damages, interest, attorneys fees and costs and expenses, including attorney's fees and liabilities of any kind or nature whatsoever, arising directly or indirectly out of the acts, omissions, negligence or willful misconduct of ATI, its employees or agents in connection with the performance of this Agreement. Moreover, ATI shall forever protect, save, and defend, and keep DPS and its owners, employees and agents harmless and indemnify them from claims, damages, causes of action, judgments, penalties, statutory damages, interest, attorneys fees and costs and expenses, and liabilities, including attorney's fees, resulting from claims of libel, slander, the infringement of copyright, or the unauthorized use of any trademark, trade name, or service mark, or claim that the content of any program transmitted over the Channels violates any pornography, obscenity laws, or infringes privacy rights, or any other claimed harm or unlawfulness arising from the transmission of any programming; and against claims for infringement of patents arising from ATI's use of the Transmission or Transmitter

Equipment. This indemnification shall include providing a defense on behalf of DPS, preserving DPS's right to select counsel, and to have all reasonable attorney's fees and reasonable costs, taxable and nontaxable to be paid by ATI. Where such indemnification is sought by DPS (the "Claiming Party"): (a) it shall notify in writing the other party (ATI) promptly of any claim or litigation or threatened claim to which the indemnifications relates; (b) upon ATI's written acknowledgment of its obligation to indemnify in such instance, in form and substance satisfactory to the Claiming party, the Claiming Party shall afford ATI the opportunity to participate in and, at the option of ATI, control, compromise, settle, defend or resolve such claim or litigation.

(e) Insurance. Commencing on the Start Date, ATI shall maintain a commercial general liability insurance policy with \$1 million dollars per occurrence and general annual aggregate limit and \$1 million dollars of products - completed operations aggregate limit, to cover its obligations as set forth in this Service Agreement. Upon request, ATI shall furnish DPS with insurance certificates evidencing such current insurance policies, which name DPS as a third party insured thereunder.

12. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF ATI. ATI represents and warrants as follows:

(a) Organization. ATI warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of Colorado. ATI is qualified or otherwise entitled to do business in all jurisdictions in which such

qualification or entitlement is required by reason of its business, activities, or ownership of property. ATI has all requisite power and authority to own, operate and lease its properties and to carry on its business and enter into this agreement and perform its obligations herein.

(b) Authorization. All necessary actions on the part of ATI to authorize the execution and delivery of this Agreement, and the performance of the obligations of ATI herein, have been taken.

(c) No Violations. The execution, delivery and performance of this Agreement and all actions and transactions contemplated hereby: (1) will not violate any provision of law or of the Articles of Incorporation or Bylaws of ATI, any order of any court or other agency of government to which ATI is party or by which it or any of its properties is bound, and (2) will not violate, be in conflict with, result in a breach of or constitute (with notice or lapse of time or both) a default under any applicable law, order or regulation, indenture, agreement or other instrument to which ATI is a party or by which it or any of its properties is bound and which has not been waived or consented to, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its property or assets.

(d) Reliance. DPS would not enter into this Agreement but for its reliance upon the foregoing representations and warranties of the ATI. No consent, approval or authorization of, designation, declaration or filing with any person is required in

connection with the execution, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby.

13. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF DPS. DPS represents and warrants as follows:

(a) Authorization. DPS has all requisite power and authority to enter into this Agreement and to perform the obligations to be performed by it under this Agreement. This Agreement constitutes a valid, binding and enforceable obligation of the DPS.

(b) No Violation. The execution and delivery of this Agreement by DPS and the performance of DPS's obligations hereunder are not in violation or breach of, do not conflict with or constitute a default under, and will not accelerate or permit the acceleration of the performance required by, any of the terms and provisions of any note, debt instrument, security agreement or mortgage or any other contract or agreement, written or oral to which DPS is a party or by which any assets or properties are bound, and will not be an event which, after notice of lapse of time or both, will result in any such violation, breach, conflict, default, or acceleration or under any law, judgment, decree, order, rule or regulation of any governmental authority or applicable to DPS and will not result in the creation or imposition of any lien (whether or not perfected), encumbrance, equity or restriction in favor of any third person upon any of the properties of DPS: Provided, however, that the DPS shall not be in default of this provision if

the FCC determines that any provision of the Agreement, or the Agreement as a whole, violates FCC rules or policies or the Communications Act of 1934, as amended. In such event, the Parties shall negotiate in good faith such changes to the Agreement so as to effect compliance with FCC requirements.

(c) Reliance. ATI would not enter into this Agreement but for the reliance upon the foregoing representations and warranties of the DPS.

14. TERMINATION. The termination rights of the parties shall be as set forth below:

(a) Termination for Interference. If, following the Start Date, technical interference should occur on the Channels which is beyond the control of ATI or DPS and if, following sixty (60) days' written notice to DPS of such interference and the best efforts of DPS and ATI to reduce or remove such interference, such interference shall render the use of such channels unusable for the business purposes provided for herein, ATI may terminate this Service Agreement, provided, however, that ATI shall first give written notice to DPS of its intent to terminate said agreement and provide therein complete information concerning the origin, nature and duration of such interference.

(b) Termination of FCC Authorization. This Agreement shall be terminated in the event that DPS's authority to operate the Channels in accordance with the terms of this Agreement is permanently terminated by the FCC or other governmental authority (FCC termination date). If termination shall occur pursuant to

this paragraph, such termination shall extinguish and cancel this Agreement and its future effect absolutely without further liability on the part of either party to the other; except that ATI shall remain obligated to pay all accrued monthly recurring fees and other payments required by this Agreement through the FCC termination date.

(c) Termination by Reason of Default or Nonperformance.

At the option of the non-defaulting party and subject to other provisions herein, this Agreement may be terminated upon a material breach or default by the other party of its duties and obligations hereunder. DPS may declare default upon occurrence of any of the following:

(1) ATI fails to make any payment due and payable under this Agreement within thirty (30) days after the date upon which a payment is due hereunder; or

(2) If any of the material Representations or Warranties of ATI prove at any time to be incorrect; or

(3) ATI materially breaches any covenant or agreement herein or fails to comply with any material provision of this Agreement; or

(4) ATI files a petition in bankruptcy, either voluntary or involuntary, under any federal or state insolvency law, or any answer consenting to or acquiescing in any such petition is not vacated or set aside within sixty (60) days of its filing; or the making of an assignment for the benefit of creditors; or the inability to pay debts when they become due; or

(5) The liquidation of ATI; or

(6) ATI's failure to timely construct the Facility as specified in section 5 herein.

(7) Failure by ATI to commence transmissions of ITFS programming as required by FCC Rules, or ATI's failure at any time thereafter to transmit such programming for ninety (90) consecutive days.

(d) DPS's Rights in Event of Default. In the Event of Default, or material breach by ATI, and in addition to all other remedies available to DPS in law or equity, DPS shall be entitled to terminate this Agreement, if such breach or default shall continue for a period of thirty (30) consecutive days after notice thereof shall have been sent by DPS to ATI. Since the FCC requires the holder of the ITFS license to maintain certain hours of broadcasting on the channels to maintain the FCC license, the DPS may be required to repossess the Channels and broadcast on them to meet this requirement. In addition, whenever DPS has the right to terminate this Agreement, DPS shall also have the right and option to repossess the Channels and to enforce the terms of the Agreement through the remaining period of the five year term in which the default occurs. In the event DPS elects to enforce the remaining period of the five year term, ATI shall remain 100% liable for all amounts due under this Agreement and all other obligations hereunder. If DPS elects to exercise its right to repossess the leased Channels, DPS shall also have the right to lease the Channels to a third party and/or itself. In the event the Channels

are leased to a third party, the terms shall be reasonable under the circumstances existing at the time of re-leasing. In the event DPS elects to broadcast on the channels, it shall credit ATI an amount equal to the then highest offer received from a third party, or if no such offer is solicited by DPS, then ATI shall be credited a commercially reasonable amount, in no event to exceed payments due under this agreement. All such lease amounts shall be credited to the amounts owed by ATI for the remaining period of the five year term. In the event of either repossession or termination by either party, the lease for the Transmitter Equipment between DPS and ATI shall remain in full force and effect and ATI shall take no action which shall interfere in any manner with DPS's continued operation of the Transmitter Equipment or business arrangements which DPS may have entered for use of the Transmitter Equipment. Such termination shall not affect or diminish the rights, claims or remedies available in equity or at law to the non-defaulting party arising by reason of such breach or default.

15. MISCELLANEOUS.

(a) Force Majeure. If by reason of force majeure either Party is unable in whole or in part to carry out its obligations hereunder, said party shall not be deemed in violation or default, during the reasonable continuance of such inability. The term "Force Majeure", as used herein, shall mean the following: acts of God, acts of public enemies; orders of any kind of the government of the United States of America or of the state government where the Facilities are located, or any of their departments, agencies,

political subdivision, or officials, or any civil or military authority, which orders are not the result of an act or omission of ATI; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms of extraordinary force; floods; washouts; droughts; civil disturbances; explosions; or any other cause or event not reasonably within the control of the adversely affected party.

(b) Assignment of Interests.

(1) DPS may assign, trade, sell, dispose or otherwise alienate or encumber its rights or interests under this Service Agreement regardless of whether or not the assignment is to a wholly-owned subsidiary or affiliate, and without the written consent of ATI.

(2) With DPS' approval, which may not unreasonably be withheld, ATI may assign any or all of its rights and/or interests under this Service Agreement by giving thirty (30) days written notice to DPS, and DPS shall object, if at all, in writing within twenty (20) days of receipt of each proposal. DPS's consent in writing may be obtained. If, however, no written objection has been received in hand at the end of thirty (30) days after the last proposed assignment has been given to DPS, then the assignment may proceed. DPS cannot unreasonably object to ATI's assignment of rights. In event of an assignment, ATI shall remain liable to DPS for ATI's obligation under this agreement for the remaining period of the term during which the assignment occurs.

(3) ATI may assign its rights, obligations and

interest in this Service Agreement to one or more banks in connection with financing agreements with such bank(s), provided that no such assignment shall in any way diminish DPS' rights under this Service Agreement as to ATI or any assignee, specifically including, but not limited to DPS' right to approve programming and DPS' right to own the equipment identified in paragraph 5(i) free and clear of any encumbrance.

(c) Notice. Any written notice required to be given by any party to any other party to this Service Agreement shall be deemed to have been sufficiently given if sent by prepaid overnight express courier and addressed to DPS or to ATI, as the case may be, at their respective addresses set forth in the preamble hereto, or, if different, at the last-known principal business address of each such party.

(d) Entire Service Agreement. This Service Agreement states the entire agreement as of this date between the parties with respect to the subject matter hereof and supersedes all pre-existing oral or written agreements or commitments with respect thereto. This Service Agreement may be modified only by an agreement in writing executed by all of the parties hereto. This Service Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, subject, however, to the provisions of assignment restriction as set forth herein.

(e) Survival of Representations. All representations, warranties, covenants, and agreements made by the parties hereto or

in any certificate to be delivered hereunder or made in writing in connection with the transactions contemplated herein shall survive the execution and delivery hereof and/or thereof, as appropriate.

(f) Payment of Expenses. Except as otherwise provided herein, the parties shall pay their own expenses incident to the preparation and carrying out of this agreement, including all fees and expenses of their respective counsel.

(g) Severability of Provisions. If any provision hereof is held invalid, the remainder of this agreement shall not be affected thereby.

(h) Further Action. From time to time, after the date of execution thereof, the parties shall take such further action and execute such further documents, assurances and certificates as either party may reasonably request of the other in order to effectuate the purpose hereof. In addition, each party agrees that it will not take any action which would adversely affect the rights granted by it to the other party hereunder.

(i) Counterparts. This Service Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and shall become effective when each of the parties hereto shall have had delivered to it this Service Agreement duly executed by the other party hereto.

(j) Headings. The headings herein are inserted for convenience only and shall not constitute a part hereof.

(k) Dealings with Third Parties. No party is, nor shall

any party hold itself out to be, vested with any power or right to contractually bind, or act on behalf of any other as its contracting broker, agent or otherwise for committing, selling, conveying or transferring any of the other party's assets or property, contracting for or in the name of the other party, or making any contractually binding representations as to the other party which shall be deemed representations contractually binding such party. In particular, ATI shall not be identified as the FCC licensee or permittee of the Channels.

(1) Independent Relationships. Nothing in this contract shall be construed as creating an employer-employee relationship by and between DPS and ATI, and DPS shall not be held responsible for the acts or omissions of ATI, its employees, or agents.

(2) No Third Party Beneficiaries. It is not the intent of either DPS or ATI that there be any third party beneficiary to this contract, and this contract is exclusively for the benefit of ATI or DPS or their respective assigns.

(1) Governing Law. This Service Agreement shall be governed by, and construed and enforced in accordance with, the Communications Act of 1934, as amended, the rules and policies of the FCC and the laws of the State of Colorado.

(m) FCC Rules. Anything contained herein to the contrary notwithstanding, nothing herein shall in any way limit the rights and remedies of DPS or ATI under FCC rules and regulations.

(n) License and Equipment. Nothing contained herein

shall be construed as granting to ATI any rights in or to DPS's FCC authorizations or licenses.

(o) Time of Essence. Whenever this Service Agreement shall set forth any time for the performance of an act, such time shall be deemed of the essence.

(p) Benefit. This Service Agreement shall inure to the benefit of an shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and, to the extent permissible hereunder, assigns. Nothing in this Service Agreement, expressed or implied, is intended to or shall: (1) confer on any person other than the parties hereto or their respective heirs, legal representatives, successors, or assigns, any rights, remedies, obligations or liabilities under or by reason of this Service Agreement; or (2) constitute a partnership or joint venture between the parties hereto.

(q) Word Meanings. As used in this Service Agreement, the term "including" shall be deemed to mean including without limitation. All pronouns and any variation therefore shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require.

(r) Reformation. If the FCC should (1) change its rules or policies in a manner that would affect the enforceability of this Service Agreement, (2) directly or indirectly reject or take action to challenge the enforceability of this Service Agreement, or (3) take any steps whatsoever, on its own initiative or by petition from another person, to challenge or deny the authority

heretofore granted by the FCC with regard to the Channels, then the parties hereto shall promptly negotiate in good faith to reform and amend this agreement to the extent possible to preserve the intent and objectives of the parties in making this agreement.

(s) Attorney's Fees. If it shall be necessary for either DPS or ATI to employ an attorney to enforce their respective rights pursuant to this Agreement because of the Default of the other Party, the losing Party shall reimburse the prevailing Party for reasonable attorney's fees.

16. TARIFF AND DPS STATUS.

(a) If required by the rules and policies of the FCC, DPS hereby agrees to file and maintain a tariff with the FCC which is in no way inconsistent with the terms and conditions of this agreement. If the FCC requires that a tariff be filed, ATI shall assist DPS in the preparation, filing and maintenance of such tariff.

(b) In the event that DPS is at any time not subject to tariff regulation, this agreement shall remain in full force and effect and shall govern the service herein contemplated.


IN WITNESS WHEREOF, the parties, by their duly authorized signatory, have executed this ITFS Service Agreement on the date and year written below.

DENVER PUBLIC SCHOOLS, SCHOOL DISTRICT NO. 1

By: Thomas R. Mauro Date: 3/3/94

Title: Tom Mauro, President
Board of Education

AMERICAN TELECASTING OF DENVER, INC.

By: 
Title: Brian Gast, President

Date: 3-9-94

Denver, CO

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